5–10–02 Friday
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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

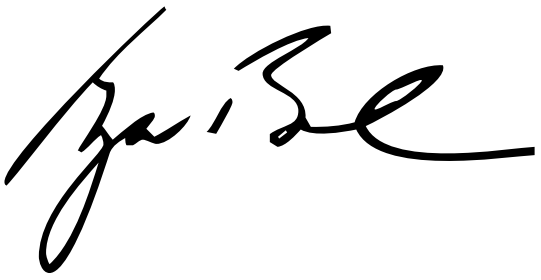
Presidential Determination No. 02–17 of April 24, 2002

Military Drawdown for Georgia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and laws of the United States, including title III (Foreign Military Financing) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (Public Law 106–429), as amended by title III (Foreign Military Financing) of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 2002 (Public Law 107–115), I hereby direct the drawdown of defense articles from the stocks of the Department of Defense, defense services from the Department of Defense, and military education and training of an aggregate value of $4 million for Georgia, for the purposes of part II of the Foreign Assistance Act of 1961, as amended.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, April 24, 2002.

[FR Doc. 02–11904
Filed 5–9–02; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 02–18 of April 27, 2001

Determination to (1) Waive Section 512 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115) and Section 620(q) of the Foreign Assistance Act of 1961, as amended to Provide Assistance to Afghanistan and (2) Authorize a Drawdown Under Section 506(a)(1) of the Foreign Assistance Act of 1961, as Amended, to Provide Emergency Military Assistance to Afghanistan

Memorandum for the Secretary of State [and] the Secretary of Defense

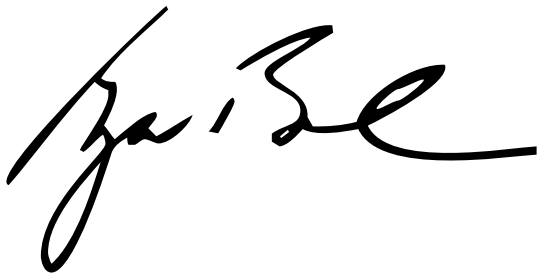
Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 512 of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 2002 (Public Law 107–115) (FOAA) and sections 506(a)(1) and 620(q) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (FAA), I hereby determine that:

(1) assistance to Afghanistan is in the national interest of the United States; and

(2) an unforeseen emergency exists that requires immediate military assistance to the Government of Afghanistan for purposes of training and equipping the Afghan national armed forces; and the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506(a)(1) of the FAA.

Accordingly, I hereby waive section 512 of the FOAA and section 620(q) of the FAA with respect to assistance to Afghanistan. Further, I hereby direct the drawdown of up to $2 million of defense articles, services, and training from the inventory and resources of the Department of Defense for military assistance for Afghanistan.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, April 27, 2002.

[FR Doc. 02–11905
Filed 5–9–02; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV02–915–2 FR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Avocado Administrative Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.19 to $0.20 per 55-pound bushel container or equivalent of avocados handled. The Committee locally administers the marketing order which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable avocados beginning April 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.19 to $0.20 per 55-pound bushel container or equivalent of avocados handled.

The Florida avocado marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–01 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on January 9, 2002, and unanimously recommended 2002–03 expenditures of $211,082 and an assessment rate of $0.20 per 55-pound bushel container or equivalent of avocados. In comparison, last year's budgeted expenditures were $187,384. The assessment rate of $0.20 is $0.01 higher than the rate currently in effect.

The Florida Lime Administrative Committee and the Avocado Administrative Committee have shared certain costs (staff, office space, and equipment) for economy and efficiency. Each Committee's share of these costs was based upon the amount of work and time devoted to their particular programs. In April 2001, the Lime Administrative Committee voted to suspend its regulations, including assessment collection. The suspension runs from February 19, 2002, to February 24, 2003 (67 FR 6837). They will not need an administrative staff, office space, or equipment during the suspension period. Therefore, the Avocado Administrative Committee must assume increased costs. The increased assessment is needed to generate more assessment funds to cover the increased expenses, and to reduce

the amount of reserve funds the avocado committee has to use to pay those expenses. Without the assessment rate increase, the Avocado Administrative Committee would have had to use $26,582 of its operating reserve to cover the estimated expenses. With the increase, the Committee only has to use $17,082 of its operating reserve to cover expenses.

The major expenditures recommended by the Committee for the 2002–03 year include $76,800 for salaries, $39,850 for local & national enforcement, $20,000 for research, $19,499 for insurance and bonds, and $17,958 for employee benefits. Budgeted expenses for these items in 2001–02 were $60,000, $45,615, $17,000, $14,336, and $15,180, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida avocados. Avocado shipments for the year are estimated at 950,000 bushels which should provide $190,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $96,633) will be kept within the maximum permitted by the order (approximately three fiscal periods' expenses).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 150 producers of avocados in the production area and approximately 33 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

According to the Florida Agricultural Statistics Service, the average f.o.b. price for fresh avocados during the 2000–01 season was $14.60 per 55-pound bushel container or equivalent for all domestic shipments and total shipments were 1,005,000 bushels. Using these prices, virtually all avocado handlers could be considered small businesses under the SBA definition. The majority of Florida avocado handlers and producers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.19 to $0.20 per 55-pound bushel container or equivalent of avocados. The Committee unanimously recommended 2002–03 expenditures of $211,082 and an assessment rate of $0.20 per 55-pound bushel container. The assessment rate of $0.20 is $0.01 higher than the 2001–02 rate. The quantity of assessable avocados for the 2002–03 season is estimated at 950,000. Thus, the $0.20 rate should provide $190,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2002–03 fiscal year include $76,800 for salaries, $39,850 for local & national enforcement, $20,000 for research, $19,499 for insurance and bonds, and $17,958 for employee benefits. Budgeted expenses for these items in 2001–02 were $60,000, $45,615, $17,000, $14,336, and $15,180, respectively.

The Florida Lime Administrative Committee and the Avocado Administrative Committee shared certain costs (staff, office space, and equipment) for economy and efficiency. Each Committee's share of these costs was based upon the amount of work and time devoted to their particular programs. In April 2001, the Lime Administrative Committee voted to suspend its regulations, including assessment collection. The suspension runs from February 19, 2002, to February 24, 2003 (67 FR 6837). They will not need an administrative staff, office space, or equipment during the suspension period. Therefore, the Avocado Administrative Committee must assume increased costs. The increased assessment is needed to cover the increased costs and to keep its operating reserve at an acceptable level.

The Committee reviewed and unanimously recommended 2002–03 expenditures of $211,082 which included increases in administrative and office salaries, and research programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. These groups discussed alternative expenditure levels. The assessment rate of $0.20 per 55-pound bushel container of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 950,000 55-pound bushel containers or equivalents for the 2002–03 fiscal year. This is approximately $21,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2002–03 season could range between $10.00 and $60.00 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue for the 2002–03 fiscal year as a percentage of total grower revenue could range between .3 and 2 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all

interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 9, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on March 15, 2002 (67 FR 11614). Copies of the proposed rule were also mailed or sent via facsimile to all avocado handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending April 15, 2002, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2002–03 crop avocados from growers. Moreover, the crop year began on April 1, 2002, and the assessment rate applies to all avocados handled during the 2002–03 and subsequent seasons. Further, the Committee needs sufficient funds to pay its expenses, and handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2002, an assessment rate of $0.20 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: May 3, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–11676 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–1 FR]

Dried Prunes Produced in California; Undersized Regulation for the 2002–03 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the undersized regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 2002–03 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets and allows handlers to dispose of the undersized prunes in such outlets as livestock feed. The Committee estimated that this rule will reduce the excess of dried prunes by approximately 3,800 tons while leaving sufficient prunes to fill foreign and domestic trade demand.

EFFECTIVE DATE: August 1, 2002. This final rule applies to undersized dried prunes received by handlers during the 2002–03 crop year until the prunes are disposed of as required under the marketing order.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his

or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule changes the undersized regulation in § 993.49(c) of the prune marketing order for the 2002–03 crop year for volume control purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening will be increased from 23/32 to 24/32 of an inch in diameter; and for non-French prunes, the opening will be increased from 28/32 to 30/32 of an inch in diameter. This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. This rule will be in effect from August 1, 2002, through July 31, 2003, and was unanimously recommended by the Committee at a November 29, 2001, meeting.

Authority for Undersized Regulations as a Volume Control

Section 993.19b of the prune marketing order defines undersized prunes as prunes, which pass freely through a round opening of a specified diameter.

Section 993.49(c) of the prune marketing order establishes an undersized regulation of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also provides that the USDA upon a recommendation of the Committee may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation.

Section 993.50(g) states in part: ''No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes.'' * * * Pursuant to § 993.52 minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the USDA on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized prune openings prescribed in § 993.49(c) to permit undersized regulations using openings of 23/32 or 24/32 of an inch for French prunes and 28/32 or 30/32 of an inch for non-French prunes.

History of Undersized Regulations Used as a Volume Control

During the 1974–75 and 1977–78 crop years, USDA established the undersized prune regulation at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and USDA established volume regulation percentages during the 1974–75 crop year with an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes. During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15 1975; and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes—particularly small-sized prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77, and 1977–78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized prune regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes. During the 1998–99 crop year, an undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998). With larger than desired carryin inventories and a 1999–2000 prune crop of about 172,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.406 (64 FR 23759, May 4, 1999) and made effective from August 1, 1999, through July 31, 2000, or until the undersized prunes from that crop were disposed of as required. Because carryin inventories were larger than desired and the 2000–01 prune crop was expected to be about 203,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.407 (65 FR 29945, May 10, 2000) and made effective from August 1, 2000, through July 31, 2001, or until the undersized prunes were properly disposed of as required. Because supplies were expected to remain excessive in 2001–02, the Committee again unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.408 (66 FR 30642, June 7, 2001) and made effective from August 1, 2001, through July 31, 2002, or until the undersize prunes are disposed of under the marketing order.

For the 1998–99 crop year, the carryin inventory level reached a record high of 126,485 natural conditions tons. Excessive inventories tend to dampen producer returns, and cause weak marketing conditions. The carryin for the 1999–2000 crop year was reduced to 59,944 natural condition tons. This reduction was due to the low level of salable production in 1998–99 (about 102,521 natural condition tons and 50 percent of a normal size crop) and the undersized prune regulation. The carryin for the 2000–01 crop increased to 65,131 natural condition tons. This increase was due to a larger crop size of about 178,000 natural condition tons and reduced shipments during the 1999–2000 crop year. The carryin for the 2001–02 crop increased to 100,829 natural condition tons. This increase was due to a larger crop size of about 219,000 natural condition tons and a modest increase in shipments from a severely reduced shipment base during the 2001–02 crop year. According to the Committee, the desired inventory level to keep trade distribution channels full

while awaiting the new crop has ranged between 35,353 and 42,071 natural condition tons since the 1996–97 crop year, while the actual inventory has ranged between 59,944 and 126,485 natural condition tons since that year. The desired inventory level for early season shipments fluctuates from year-to-year depending on market conditions.

At its meeting on November 29, 2001, the Committee unanimously recommended continuing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes during the 2002–03 crop year for supply management purposes. This regulation will be in effect from August 1, 2002, through July 31, 2003, or until the undersized prunes from 2002–03 are properly disposed of as required under the marketing order.

The Committee estimated that there will be an excess of about 15,422 natural condition tons of dried prunes as of July 31, 2002. This rule will continue to remove primarily small-sized prunes from human consumption channels, consistent with the undersized prune regulations that were implemented for the 1998–99, 1999–2000, 2000–01, and 2001–02 crop years. It is estimated that approximately 3,800 natural condition tons of small prunes will be removed from human consumption channels during the 2002–03 crop year as a result of this rule. This will leave sufficient prunes to fill domestic and foreign trade demand during the 2002–03 crop year, and provide an adequate carryout on July 31, 2003, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the 2002–03 crop is about 41,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing for several more years (estimated at 317,628 natural condition tons by the year 2006); (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 2000–01 crop years, the yields ranged from 1.2 to 2.6 versus a 10-year average of 2.1 tons per acre); (4) California's continued excess inventory situation; and (5) extremely low producer prices. The production of these small sizes ranged from 1,335 to 8,778 natural condition tons during the 1990–91 through the 1999–2000 crop years. The Committee concluded that it has to continue utilizing all available supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. To facilitate this management, the Committee has also supported other efforts to reduce burdensome supplies, including an industry-funded tree removal program that was initiated in the fall of 2001. Through this program, about 3,500 bearing acres of prune plum trees were removed. The Committee also recommended removal of prune plum trees through a USDA funded program, wherein growers would be encouraged to remove up to 20,000 bearing acres of prune plum trees. The final rule was published in the March 14, 2002, **Federal Register** (67 FR 11384). The changes to the undersized regulation for the 2002–03 crop year and the expected removal of prune plum trees are intended to bring supplies in line with market needs.

Despite these supply management efforts, the industry's oversupply situation may continue over the next few years due to new prune plantings in recent years with higher yields per acre. These plantings have a higher tree density per acre than the older prune plantings. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres; but by 1998–99, the non-bearing acreage had quadrupled to more than 26,000 acres. The non-bearing acreage has subsequently been reduced to 15,000 acres during the 2000–01 crop year. The 1996–97 through 2000–01 yields have ranged from 1.2 to 2.6 tons per acre. Over the last 10-years, the average was 2.1 tons per acre.

The 2001–02 dried prune crop is expected to be 141,000 natural condition tons. Another large crop as high as 200,000 natural condition tons is expected for the 2002–03 crop year, partly because of an anticipated increase in new bearing acreage coming into production and high yields.

The 1997–98 crop year producer prices for the 24/size French prunes have been about $40–$50 per ton, about $260–$270 per ton below the cost of production. During the 2001–02 crop year, feedlot prices are expected to be about $20 to $40 per ton for the 24/32 size French prunes, which is about $270–290 per ton below the cost of production. The lower producer prices are expected to continue until the prune supply and demand come more closely into alignment.

The intent of this final rule is to eliminate small sizes that have limited economic value, help reduce excess prune inventories, and to improve producer returns. Average producer returns currently are below the cost of production and the final rule is expected to assist in enhancing returns.

The 1998–99, 1999–2000, 2000–01, and 2001–02 undersized prune rules of 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes have expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 2001, was 100,829 natural condition tons, and only about 3,800 natural condition tons of dried prunes are expected to be removed from the 2001–02 marketable supply by the current undersized regulation. The Committee believes that the same undersized regulation also should be implemented during the 2002–03 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 2002–03 prune crop, and more quickly bring supplies in line with demand. Attainment of this goal will benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings will be continuous for the purposes of quality control even in above parity situations. Congress intended marketing orders to foster income equity for agricultural producers with non-agricultural producers, and used parity as a means of comparison. Parity compares agricultural producer prices against those for non-agricultural producers during the early 1900's, when incomes for agricultural and non-agricultural producers were generally thought to be fair. It further states that any change (i.e. increase) in the size of those openings will not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warranted the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers ranged from 39 percent to 62 percent of parity during the 1994 through 1999 seasons. As discussed later, the average grower price for prunes during the 2002–03 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation will be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced

commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because this action is for inventory management, not quality control. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented to improve product quality. The increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters will not be applied to imported prunes.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, could be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

As recommended by the Committee, this final rule will establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 2002–03 crop year for inventory management. This change in regulation will result in more of the smaller sized prunes being classified as undersized prunes and is expected to benefit producers, handlers, and consumers. The larger screen openings currently in place for 2001–02 are the same as those for 2002–03 and are expected to remove only 3,806 tons of dried prunes from the excess marketable supply. Implementation of the larger openings in 2002–03 is expected to remove approximately 3,800 tons from the marketable production.

The Committee estimates carryout inventories at July 31, 2002, to be 56,195 tons. This is 15,422 tons greater than desirable carryout inventories. This amount of inventory reflects a serious supply-demand imbalance in the industry. In addition, grower prices are reported at an average of $763 per ton for the 2001–02 crop year. This compares to $845 per ton for the 2000–01 season, or a decrease of 9.7 percent. The $763 average grower price is substantially below the total cost of production of $1,724 per ton and the total variable cost of production of $985 estimated for 2001–2002, meaning that most producers may not be earning sufficient returns to cover fixed costs. Some producers will continue to operate in the short run as long as prices are above variable costs, but others will begin to cease production in the longer run if prices do not recover to levels above the total cost of production.

A tree removal program funded by the industry and a USDA-funded program are in various stages of implementation. If these programs are successful in removing 20,000 bearing acres from production, marketable production will be reduced. Even with these tree removal programs, total available supply is estimated at 242,195 tons for the 2002–03 crop year (marketable production estimated at 186,000 tons and 56,195 tons of carryin inventories). Total demand is estimated at 167,591 tons, resulting in carryout inventories of 74,604 tons. With this large estimated crop size, inventories will increase and remain in excess of desirable inventories of 40,000 tons.

Inventories of this magnitude have a significant depressing impact on grower payments. Growers do not receive payments until inventories are completely sold. The costs of maintaining these inventories are deducted from grower payments.

An undersized prune regulation for 2002–03 will result in an additional 3,800 tons being removed from the total available supply. An econometric model shows that an undersized prune regulation resulting in eliminating 3,800 tons from marketable production will strengthen growers' prices modestly by $11 per ton. This price is still expected to be less than the cost of production for 2002–2003 estimated at $1,032 per ton.

Because the benefits and costs of the action will be directly proportional to the quantity of 24/32 screen French prunes and 30/32 screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the action. While variation in sugar content, prune density, and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys (which account for over 99 percent of the State's production), the prunes produced are homogeneous enough that this action will not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large, but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for large entities. The only additional costs on producers and handlers expected from the increased openings will be the disposal of additional tonnage (now estimated to be about 3,800 tons) to nonhuman consumption outlets. These costs are expected to be minimal and will be offset by the benefits derived by the elimination of some of the excess supply of small-sized prunes.

At the November 29, 2001, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handlers and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for producers is quite bleak with producers losing about $270–$290 on every ton of small-sized prunes delivered to handlers. During the 2002–03 crop year, the feedlot prices for 24/32 screen French prunes are expected to be about $20 to $40 per ton. This price is similar to the $20–$40 price received

during the 2001–02 crop year. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, transportation is at least $20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion) is $30 per ton for a total cost of about $310 per ton. This equates to a loss of about $270–$290 per ton for every ton of 24/32 screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, USDA has evaluated the impact of the proposed undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories could result in higher season-average prices, which would benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes produced in California from human consumption outlets would eliminate an estimated 3,800 tons of small-sized dried prunes during the 2002–03 crop year from the marketplace. This would help lessen the negative marketing and pricing effects resulting from the excess inventory situation facing the industry. California prune handlers reported that they held 100,829 tons of natural condition prunes on July 31, 2001, the end of the 2000–01 crop year. The 100,829 ton year-end inventory is larger than what is desired for early season shipments by the prune industry. The desired inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 41,000 natural condition tons. This leaves a 2001–02 inventory surplus of about 60,000 tons. The undersized regulation will help reduce the surplus, but the anticipated large 2002–03 prune crop is expected to continue the supply imbalance.

As the marketable dried prune production and surplus prune inventories are reduced through this rule, and producers continue to implement improved cultural and thinning practices to produce larger-sized prunes, continued improvement in producer returns is expected.

For the 1991–92 through the 1999–2000 crop years, the season average price received by the producers ranged from a high of $1,140 per ton to a low of $764 per ton during the 1998–99 crop year. The season average price received by producers during that 9-year period ranged from 39 percent to 68 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for 2001–02 season is expected to be about the same as the 2000–01 season average producer price of $809 per ton, or about 36 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change is needed to expedite that reduction. The Committee also considered the potential impact of tree removals through the industry funded program which removed about 3,500 acres, and the tree removal program funded through USDA (California Prune/Plum Diversion Program), but concluded that these efforts alone were not likely to reduce the oversupply of small dried prunes sufficiently. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation during the 2001–02 crop year. This alternative was not widely supported for a number of reasons. Reserve pools for prunes have historically been implemented ''across the board'' as far as sizes are concerned. While there is an exchange provision that allows handlers to remove larger prunes from the pool by replacing them with smaller prunes and the value difference in cash, this would be a cumbersome, expensive-to-administer alternative to implementing this undersized regulation. A third alternative discussed was to advance to a 25/32 screen undersized regulation for French prunes. However, handlers expressed concern that this will reduce the amount of manufacturing prunes (approximately 6,000 tons) available for the manufacture of prune juice and concentrate. This will increase the prices of these products.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for inventory management, not quality control purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters will not be applied to imported prunes.

This action will not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 29, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Moreover, the Committee and its Supply Management Subcommittee have been monitoring the supply situation, and this rule reflects their deliberations completely.

A proposed rule concerning this action was published in the **Federal Register** on Friday, March 15, 2002, (67 FR 11625). Copies of this rule were mailed or sent via facsimile to all Committee members, alternates and dried prune handlers. Finally, the Office of the Federal Register and USDA made the rule available through the Internet. The rule provided a comment period that ended April 15, 2002. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend

to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 993.409 is added to read as follows:

§ 993.409 Undersized prune regulation for the 2002–03 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 2002–03 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes, 24/32 of an inch in diameter; for non-French prunes, 30/32 of an inch in diameter.

Dated: May 3, 2002.

Barry L. Carpenter,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–11675 Filed 5–9–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 516 and 567

[No. 2002–19]

RIN 1550–AB45

Capital: Qualifying Mortgage Loan, Interest Rate Risk Component, and Miscellaneous Changes

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is making miscellaneous changes to its capital regulations. These changes are designed to eliminate unnecessary capital burdens and to align OTS capital regulations more closely to those of the other federal banking agencies. Under the final rule, a one-to four-family residential first mortgage loan will qualify for a 50 percent risk weight if it is underwritten in accordance with the prudent underwriting standards found in the Interagency Guidelines for Real Estate Lending, including standards relating to loan-to-value (LTV) ratios. The final rule also clarifies certain issues regarding the calculation of the LTV ratio.

OTS also is eliminating the requirement that a thrift must deduct from total capital that portion of a land loan or a nonresidential construction loan in excess of an 80 percent LTV ratio; eliminating the interest rate risk component of the risk-based capital regulations; modifying the definition of OECD-based country; and making a technical change to conform its treatment of reserves for loan and lease losses to that of the other federal banking agencies.

DATES: Effective July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Michael D. Solomon, Senior Program Manager for Capital Policy, (202) 906–5654; David Riley, Project Manager, (202) 906–6669, Supervision Policy; or Teresa A. Scott, Counsel (Banking and Finance), (202) 906–6478, Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On March 15, 2001, OTS published a notice of proposed rulemaking seeking comment on a number of changes to its capital regulations. 66 FR 15049. These changes were designed to eliminate unnecessary burden and to align OTS capital regulations more closely to those of other federal banking agencies.[1] These proposed changes comply with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), which directs the banking agencies to make their regulations and guidance uniform, consistent with principles of safety and soundness, statutory law and policy, and the public interest.

Specifically, OTS proposed to change its definition of a qualifying mortgage loan. Under current rules, a one-to four-family residential first mortgage loan will qualify for a 50 percent risk weight if it has a LTV ratio of 80 percent or less and meets other criteria. OTS proposed to revise the LTV requirement to permit a loan to qualify for a 50 percent risk weight if it has a LTV ratio of less than 90 percent. OTS also proposed to: (1) Eliminate the requirement that a thrift must deduct from total capital that portion of a non-residential construction and land loan that exceeds an 80 percent LTV ratio; (2) eliminate the interest rate risk component of the capital rules; (3) increase the risk weight on high quality, stripped mortgage-related securities; (4) modify the definition of OECD-based country; and (5) make a technical change to the treatment of reserves for loan and leases losses.

II. Comment Discussion

Eleven commenters responded to the proposed rule. The commenters included one savings and loan holding company, seven savings associations, and three trade associations. Generally, the commenters supported the proposed rule. These comments are discussed below.

A. One-to Four-Family Residential Mortgage Loans

OTS and the other federal banking agencies apply similar, but not identical, capital rules to one- to four-family residential first mortgage loans. Each agency provides that a one- to four-family residential first mortgage loan may receive a 50 percent risk weight if the loan meets certain specified criteria. To be eligible to receive the 50 percent risk weight, each agency requires that the loan may not be more than 90 days delinquent and must be prudently underwritten. [2]

Only OTS rules specifically require that a one- to four-family residential loan must have a LTV ratio of 80 percent or less at origination to qualify for the 50 percent risk weight.[3] All of the federal banking agencies, however, have indicated that prudent underwriting must include an appropriate LTV ratio,[4] and have clarified that a loan secured by a one-to four-family residential property will have an appropriate LTV ratio if the loan complies with the Interagency Guidelines for Real Estate Lending (Interagency Lending Guidelines).[5] These guidelines provide that an institution should establish internal LTV limits for real estate loans, including loans on one- to four-family residential properties. The guidelines do not establish a specific supervisory LTV limit for such loans. Rather the

[1] The other federal banking agencies include the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC).

[2] 12 CFR part 3, App. A., Sec. 3(a)(3)(iii)(OCC): 12 CFR part 208, App. A., Sec. III.C.3.(FRB); 12 CFR part 325, App. A., Sec. II.C. (FDIC); 12 CFR 567.1 (OTS).

[3] *See* definition of qualifying mortgage loans at § 567.1.

[4] 64 FR 10194, 10196, fn. 6 (Mar. 2, 1999).

[5] *Id.* The Interagency Guidelines for Real Estate Lending are located at 12 CFR part 34, subpart D (OCC); 12 CFR part 208, subpart E (FRB); 12 CFR part 365 (FDIC); and 12 CFR 560.100–101 (OTS).

guidelines state that an institution should require appropriate credit enhancements (e.g., private mortgage insurance or readily marketable collateral) for a loan with an LTV that equals or exceeds 90 percent at origination. In addition, a loan that does not comply with this standard is permissible if the loan is supported by other credit factors, is an excluded transaction, or is a prudently underwritten exception to the lender's policies.[6]

OTS proposed to revise its definition of qualifying mortgage loan. Specifically, OTS proposed to raise the current LTV limit from below 80 percent to below 90 percent and to continue to include an express LTV requirement. OTS requested comment whether it should retain an explicit LTV requirement or conform its rule more closely to those of the other banking agencies.

1. Should OTS Include an Explicit LTV Standard in its Definition of Qualifying Mortgage Loan?

Seven commenters discussed whether OTS should retain the explicit LTV requirement in the final rule. Three commenters supported the retention of an explicit LTV standard. Those commenters argued that thrifts' high concentration of mortgage loans justifies a treatment that is substantially similar but more sharply defined than the treatment of mortgage lending at other depository institutions. Moreover, the commenters asserted that an explicit standard provides a clear, non-judgmental definition of a qualifying mortgage loan and limits the potential for confusion between the institution and its examiners. Four commenters urged OTS to delete the explicit LTV requirement. They argued that an explicit standard in unnecessary, and that the change would put thrifts on an equal footing with banks and conform OTS rules to the rules of other banking agencies.

The final rule deletes the explicit LTV requirement for qualifying mortgage loans. Although the LTV ratio is a meaningful measure (among others) of credit risk, OTS has concluded that the Interagency Lending Guidelines on LTV ratios sufficiently address the credit risks of residential mortgage lending. In addition, an explicit standard may competitively disadvantage thrifts since banks have been subject to a more flexible standard. Further, deleting the explicit requirement will align OTS regulations more closely to those of the other banking agencies and, is thus, more consistent with section 303 of CDRIA.

OTS research suggests that one- to four-family residential loans are generally subject to a disproportionately high capital burden, relative to other types of loans.[7] OTS'' review of charge-off and delinquency rates[8] for various categories of loans (one- to four-family residential loans, multi-family loans, other real estate loans, consumer loans, agricultural loans, commercial and industrial loans) disclosed that one- to four-family residential loans carry substantially less risk than other loan types, relative to their respective risk weights. In this rule, OTS intends to reduce the disparity of the risk weights among these loans and expand the availability of residential mortgage products.[9]

Accordingly, the final rule provides that a qualifying mortgage loan must be underwritten in accordance with prudent underwriting standards, including standards relating the ratio of the loan amount to the value of the property. The rule will specifically cross-reference the Interagency Lending Guidelines in the Appendix to 12 CFR 560.101.[10]

2. What Types of Credit Enhancement Should OTS Consider in Determining Whether a Loan Meets the LTV Requirement Under the Capital Rules?

Under the current capital rule, a mortgage loan may satisfy the LTV requirement if an issuer approved by Fannie Mae or Freddie Mac provides an appropriate level of private mortgage insurance. OTS specifically asked whether it should permit other forms of credit enhancement in determining whether a loan meets the LTV requirement under the capital rules.

Nine commenters addressed this issue. Seven commenters agreed that OTS should permit additional forms of credit enhancement. These commenters noted that the Interagency Lending Guidelines permit other forms of credit enhancement. One commentator argued that savings associations are treated less favorably than other banking entities because OTS current rules differ from the guidelines.

Two commenters opposed additional credit enhancements. One maintained additional credit enhancements would raise questions regarding the financial soundness of any guarantor, the type of credit coverage that is supplied, and the overall credit risk to the banking industry. The other commenter contended that high LTV loans carry substantial risk and that losses could occur not only on single loans but also catastrophically throughout a loan portfolio.

The final rule relies on the Interagency Lending Guidelines, which permit institutions to consider various types of credit enhancements when determining whether a one-to four-family residential property loans has an appropriate LTV ratio. Such appropriate credit enhancements include private mortgage insurance and readily marketable collateral.[11]

OTS believes that the definition of readily marketable collateral in the Interagency Lending Guidelines adequately addresses potential safety and soundness concerns by requiring a perfected security interest and by requiring appropriate discounts from market value in determining the value of readily marketable collateral's value. OTS will, as a part of the examination process, review an institution's use of credit enhancements to ensure that any private mortgage insurance and readily marketable collateral provide protection against loss equivalent to that provided by residential real estate collateral.

[6] Under the guidelines, the aggregate amount of all loans in excess of the supervisory LTV limits and all loans made pursuant to exceptions to the general lending policy is limited to 100 percent of total capital.

[7] *See* OTS Research Working Paper titled ''Based Buckets and Loan Losses: Absolute and Relative Loan Underperformance at Banks and Thrifts,'' available on the OTS Website at *www.ots.treas.gov*.

[8] The charge off rate is charge offs net recoveries for each loan type divided by the total loan balance of that type of loan. The delinquency rate is the sum of loans more than 90 days past due for each loan type, divided by the total loan balance for that type of loan. Our review of charge-off data, which co-mingled expected and unexpected losses, covered the period from 1984 to 1999. While risk-based capital is primarily for unexpected losses, average (historical) losses are not irrelevant. For example, capital levels can be modeled based on dispersion of expected (historical) losses.

[9] In the past, some institutions have over-invested in fixed-rate one- to four-family mortgage loans, which created interest rate risk problems. However, as discussed below, improved supervisory tools for interest rate risk analysis, industry awareness of interest rate risk, and improved interest rate risk management have mitigated this concern.

[10] In addition, OTS will continue to apply factors described in the Interagency Expanded Guidance for Subprime Lending Programs when determining the level of capital necessary to support subprime lending programs. (OTS CEO Letter No. 137 (February 2, 2001)).

[11] Readily marketable collateral is defined as ''insured deposits, financial instruments, and bullion in which the lender has a perfected security interest. Financial instruments and bullion must be salable under ordinary circumstances with reasonable promptness at a fair market value determined by uotations based on actual transactions, on an auction or similarly available daily bid and ask price market. Readily marketable collateral should be appropriate discounted by the lender consistent with the lender's usual practices for making loans secured by such collateral.'' *See* Appendix to 12 CFR 560.101.

3. How Should Thrifts Calculate the LTV Ratio?

Positively Amortizing Loans. Under the current rule, a qualifying mortgage loan must have a documented LTV ratio that does not exceed 80 percent at origination. OTS proposed to clarify that a mortgage loan that is paid down to an appropriate LTV ratio after origination may become a qualifying mortgage loan, if it meets all other requirements. One commenter specifically supported this provision and no commenter opposed this clarification. Accordingly, OTS has included clarifying language in the final rule.

Negatively Amortizing Loans. OTS proposed to clarify that a residential mortgage loan that negatively amortizes to a LTV ratio above 90 percent would not be accorded a 50 percent risk weight. OTS specifically requested comment whether this treatment is appropriate.

Three commenters opined that loans that negatively amortize above a 90 percent LTV ratio, for whatever reason, should be placed in the 100 percent risk-weight category.[12] Another commenter agreed that loans designed to negatively amortize as a routine and predictable matter loans pose extraordinary collateral risk that should be addressed by capital requirements at origination. This commenter, however, suggested that a loan should qualify for a lower risk weight if it negatively amortizes solely as a result of deferred or capitalized interest. The commenter reasoned that the somewhat higher credit risk was offset by the stabilizing effect on the borrower's ability to service the loan during limited periods of unusual interest rate stress.

One commenter noted that if an LTV rises above 90 percent because of borrower default, the capital requirement should be governed by the rules related to classified loans. Another commenter agreed that negatively amortizing loans should be addressed through increases to the loan loss reserves.

OTS recognizes that some types of negatively amortizing loans may result in additional credit risk and others may not.[13] In light of the differing credit risks posed by these negatively amortizing loan products, OTS declines to specifically address this point in its final rule. Instead, the final rule simply provides that a qualifying mortgage loan must maintain an appropriate LTV ratio based on the amortized principal balance of the loan. OTS expects thrifts to review loans structured with negative amortization features and loans that have the potential for negative amortization to ensure that LTV ratios commensurate with the risk of the loan are maintained. OTS plans a more comprehensive assessment of these issues and may issue supervisory guidance on this matter. In the interim, a savings association that categorizes substantial number of negatively amortizing loans in the 50 percent risk weight will receive increased regulatory scrutiny to ensure that the savings association maintains capital commensurate with the risk of the loans.

Reevaluation of loan collateral. OTS also specifically requested comment whether it should permit the reevaluation of collateral values in an appreciating market, or require reevaluations in a declining market in determining whether a loan meets the LTV standard.

Six commenters specifically opposed any rule that would require a thrift to reevaluate collateral in a declining market. Three commenters argued that collateral deterioration is best addressed through the allowance for loan and lease losses, since these allowances are intended to capture subsequent changes in credit risk. Two commenters argued that a reevaluation requirement would be costly and would add needless complexity to thrift operations. If reevaluations are required, one commenter urged OTS to establish the original collateral value as the lowest value that may be used for LTV computation. The commenter argued that this position is consistent with other regulatory requirements.

Three commenters urged OTS to permit a thrift to reevaluate collateral where there is market appreciation or where the borrower has made property improvements. One of these commenters, however, would permit the thrift to reevaluate for market appreciation only where the principal amount has increased and the increase would otherwise trigger a higher capital requirement. Another commenter would not permit reclassification for market appreciation under any circumstances. Finally, one commenter would permit a thrift to reevaluate collateral for appreciation or depreciation where the expected LTV ratio is close to 90 percent. The commenter suggested that OTS use the examination process to ensure that thrifts do not ignore declining values.

OTS believes that further consideration is needed before it determines whether to revise its rules to permit or require recalculation of LTV ratios on the basis of changing market prices. OTS has reviewed the current practices of the other bank regulators and has found that there is no consistent interagency position on reevaluations. As a result, the final rule retains the current requirement that LTV ratios are calculated based upon the value of the collateral at origination.[14]

4. Other Comments on LTV Issues

One commenter addressed existing OTS rules regarding the computation of the LTV ratio where there are first and junior liens on the same property. Under current OTS rules, if a savings association holds first and junior liens on the same residential property, both loans are risk-weighted at 100 percent if the combined LTV ratio exceeds 80 percent. The commenter argued that the combined loans should receive a 100 percent risk weight only when the loans are originated simultaneously. It asserted that the two loans pose no greater risk than loans made on separate properties and that a savings association should not incur a higher capital charge on the first loan because of the junior loan.

The banking agencies addressed this issue in the final rule on Risk-Based Capital Standards: Construction Loans on Presold Residential Properties; Junior Liens on One-to Four-Family Residential Properties; and Investments in Mutual Funds; Leverage Capital Standards: Tier 1 Leverage Ratio.[15] The agencies concluded that it was appropriate to combine first and junior liens when calculating the LTV ratio. The agencies noted that where an institution holds first and junior liens to a single borrower with no intervening liens, it has made the economic equivalent of a single extension of credit that is secured by the same collateral. The agencies were also concerned that institutions could use creative lending arrangements to reduce capital charges

[12] One commenter agreed with this position, but would permit the lender to show that the actual LTV remained below 90 percent due to any market appreciation that is confirmed by an appropriate appraisal or other valuation. Reevaluation of loan collateral is discussed below.

[13] The preamble to the proposed rule discusses the risks of varioius negative amortizing loan products. *See* 66 FR at 15051.

[14] OTS may, on a case-by-case basis, look to the substance of a loan transaction and find that the asigned risk weight for a particular loan does not appropriately reflect the risk imposed on the savings association. Where apropriate, OTS may permit the association to assign a lower risk weight to a mortgage loan where there has been significant appreciation in market value or may require a savings association to apply a higher risk weight where there has been a significant decline in market value. *See* 66 FR 59614, 59666 (Nov. 29, 2001) to be codified at 12 CFR 567.11(c)(2).

[15] 64 FR 10194, 10195–96 (Mar. 2, 1999).

without reducing risk. OTS sees no reason to depart from this position.

Another commenter encouraged OTS and the other banking agencies to lower the risk weights on various types of loans with low LTV ratios or other characteristics that might lessen risks. OTS is reviewing whether it has sufficient empirical data to support any of these changes and, if appropriate, may commence another rulemaking in this area.

B. Land Loans and Non-Residential Construction Loans

All of the banking agencies require depository institutions to risk weight land loans at 100 percent.[16] Only OTS, however, also requires savings associations to exclude from assets (and therefore from computations of total capital), that portion of a nonresidential construction or land loan that is above an 80 percent LTV ratio.[17] OTS proposed to eliminate this additional capital charge. The commenters addressing this provision supported the change. Accordingly, OTS adopts this aspect of the proposed rule without change.

One commentator, however, suggested that OTS should also revise its rules to assign a 50 percent risk weight to loans secured by fully improved single family building lots with LTV ratios of 80 percent or less. These loans are considered to be improved property loans and are currently risk weighted at 100 percent.[18] The commenter asserted that a lower risk weight is appropriate because finished lots are not subject to development risk. OTS views these loans differently than one-to four-family loans because they are not secured by the borrowers' own home. Often the borrower is a commercial entity. OTS declines to adopt the commenter's suggestion. Therefore, OTS, consistent with the other agencies, will continue to assign finished lots to the 100 percent risk weight category.

C. Interest Rate Risk Component of Risk Based Capital

Section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) requires OTS and the banking agencies to review their risk-based capital standards to ensure that those standards take adequate account of, among other things, interest rate risk.[19] To fulfill this requirement, OTS issued a final rule in 1993 adding an interest rate risk component (IRR component) to its risk-based capital regulation at 12 CFR 567.7.[20] This IRR component is an explicit capital deduction from total capital and is imposed on institutions with above-normal levels of interest rate risk. An institution's interest rate risk is measured by dividing the decline in net portfolio value that would result from a 200 basis point increase or decrease in interest rates by the present value of the institution's assets. The amount deducted from capital is equal to one-half the difference between the institution's measured interest rate risk and a ''normal'' measured interest rate risk.

OTS concluded that the IRR component is not necessary in light of the other tools that are currently available to measure and control interest rate risk. OTS also concluded that the individual minimum capital provisions at § 567.3 satisfy the FDICIA requirement that the risk-based capital standards must take adequate account of interest rate risk. All six commenters addressing this issue supported the removal of § 567.7. Accordingly, OTS adopts this change.

D. High Quality, Stripped Mortgage-Related Securities

OTS proposed to amend its capital rules to apply a 100 percent risk-weight to all stripped, mortgage-related securities. Two commenters supported this change. OTS finalized this revision in the final interagency rule on Recourse, Direct Credit Substitutes and Residual Interests in Asset Securitizations. 66 FR 59615, 59626 fn. 24 (Nov. 29, 2001).

E. Definition of OECD-Based Country

Under existing OTS regulations, certain assets that are supported by the credit standing of the central government of, public-sector entities in, or depository institutions incorporated in Organization for Economic Cooperation and Development (OECD) based countries, receive preferential capital risk weighting over similar entities in non-OECD-based countries. OTS proposed to conform its definition of OECD-based country to the definitions of the other banking agencies. Specifically, OTS proposed to revise its definition to exclude countries that have rescheduled their external sovereign debt within the previous five years. No commenters addressed this proposed change. The final rule will incorporate the revised definition.

F. Allowance for Loan and Lease Losses

Under current OTS capital rules, supplemental capital includes general valuation loan and lease loss allowances established under OTS regulations and memoranda to a maximum of 1.25 percent of risk-weighted assets. *See* 12 CFR 567.5(b)(4). OTS proposed a technical change to the term ''general valuation loan and lease loss allowances'' to ''allowance for loan and lease losses'' to conform OTS's rule to the rules of the other banking agencies. No commenter discussed this proposed change. Accordingly, the final rule adopts the proposed change.

G. Other Changes

OTS solicited comment on whether it should address and eliminate any other capital differences between OTS and the other banking agencies. No commenter addressed this issue.

As a part of this final rule, however, OTS is making minor technical change to its application processing regulation at 12 CFR 516.40 to reflect the recent realignment of its regional offices.

III. Executive Order 12866

OTS has determined that this rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

IV. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Director of OTS has certified that this rule does not have a significant economic impact on a substantial number of small entities.

V. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. OTS has determined that the effect of this rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

[16] 12 CFR part 3, App. A., Sec. 3(a)(4)(OCC): 12 CFR part 208, App. A., Sec. III. C.4.(FRB); 12 CFR part 325, App. A., Sec. II.C. (FDIC); 12 CFR 567.6(a)(1)(iv)(G) & (H) (OTS).

[17] Compare 12 CFR 567.5(c)(2)(3) with 12 CFR part 3, App. A., Sec. 2(c)(4)(OCC): 12 CFR part 208, App. A., Sec. II. B.(FRB); 12 CFR part 325, App. A., Sec. I.B. (FDIC).

[18] *See* 12 CFR 560.101 and 123 CFR 561.26 (definition of land loan).

[19] 12 U.S.C. 1828 note.

[20] 58 FR 45799 (Aug. 31, 1993).

List of Subjects

12 CFR Part 516

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations as set forth below:

PART 516—APPLICATION PROCESSING PROCEDURES

1. The authority citation for part 516 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464, 2901 *et seq.*

2. Section 516.40(a)(2) is revised to read as follows:

§ 516.40 Where do I file my application?

(a) * * *

(2) The addresses of each Regional Office and the states covered by each office are:

Region	Office address	States served
Northeast	Office of Thrift Supervision 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.	Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virignia
Southeast	Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, Georgia 30309 (Mail to: P.O. Box 105217, Atlanta, Georiga 30348–5217).	Alabana, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, North Carolina, Puerto Rico, South Carolina, Virginia, the Virgin Islands
Midwest	Office of Thrift Supervision, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062–2326 (Mail to: P.O. Box 619027 Dallas/Ft. Worth, Texas 75261–9027.	Arkansas, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, Oklahoma, Tennessee, Texas, Wisconsin
West	Office of Thrift Supervision, Pacific Plaza, 2001 Junipero, Serra Boulevard, Suite 650, Daly City, California 94014–1976 (Mail to: P.O. Box 7165 San Francisco, California 94120–7165).	Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Northern Mariana Islands, Oregon, South Dakota, Utah, Washington, Wyoming

* * * * *

PART 567—CAPITAL

3. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

4. Section 567.1 is amended by revising the definitions of ''OECD-based countries'' and ''qualifying mortgage loan'' as follows:

§ 567.1 Definitions.

* * * * *

OECD-based country. The term *OECD-based country* means a member of that grouping of countries that are full members of the Organization for Economic Cooperation and Development (OECD) plus countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow. This term excludes any country that has rescheduled its external sovereign debt within the previous five years. A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's inability or unwillingness to meet its external debt service obligations, but generally would not include renegotiations of debt in the normal course of business, such as a renegotiation to allow the borrower to take advantage of a decline in interest rates or other change in market conditions.

* * * * *

Qualifying mortgage loan. (1) The term *qualifying mortgage loan* means a loan that:

(i) Is fully secured by a first lien on a one-to four-family residential property;

(ii) Is underwritten in accordance with prudent underwriting standards, including standards relating the ratio of the loan amount to the value of the property (LTV ratio). See Appendix to 12 CFR 560.101. A nonqualifying mortgage loan that is paid down to an appropriate LTV ratio (calculated using value at origination) may become a qualifying loan if it meets all other requirements of this definition;

(iii) Maintains an appropriate LTV ratio based on the amortized principal balance of the loan; and

(iv) Is performing and is not more than 90 days past due.

(2) If a savings association holds the first and junior lien(s) on a residential property and no other party holds an intervening lien, the transaction is treated as a single loan secured by a first lien for the purposes of determining the LTV ratio and the appropriate risk weight under § 567.6(a).

(3) A loan to an individual borrower for the construction of the borrower's home may be included as a qualifying mortgage loan.

* * * * *

5. Section 567.5 is amended by: revising paragraph (b)(4) and footnote 7 to paragraph (b)(4) as set forth below; adding ''and'' to the end of paragraph (c)(2)(i); adding a period in place of '', and'' at the end of paragraph (c)(2)(ii); and removing paragraphs (c)(2)(iii) and (c)(3).

§ 567.5 Components of capital.

* * * * *

(b) * * *

(4) *Allowance for loan and lease losses.* Allowance for loan and lease losses established under OTS regulations and memoranda to a maximum of 1.25 percent of risk-weighted assets.[7]

* * * * *

6. Section 567.6 is amended by revising paragraphs (a)(1)(iv)(G) and (a)(1)(iv)(H), to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

[7] The amount of the allowance for loan and lease losses that may be included in capital is based on a percentage of risk-weighted assets. The gross sum of risk-weighted assets used in this calculation includes all risk-weighted assets, with the exception of assets required to be deducted under § 567.6 in establishing risk-weighted assets. ''Excess reserves for loan and lease losses'' is defined as assets required to be deducted from capital under § 567.5(a)(2). A savings association may deduct excess reserves for loan and lease losses from the gross sum of risk-weighted assets (i.e., risk-weighted assets including allowance for loan and lease losses) in computing the denominator of the risk-based capital standard. Thus, a savings assocation will exclude the same amount of excess allowance for loan and lease losses from both the numerator and the denominator of the risk-based capital ratio.

(1) * * *
(iv) * * *
(G) Land loans;
(H) Nonresidential construction loans;
* * * * * *

§ 567.7 [Removed]

7. Section 567.7 is removed.

Dated: May 6, 2002.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 02–11673 Filed 5–9–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–12007; Airspace Docket No. 02–ACE–02]

Revision of Federal Airway V–220; NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action corrects the legal description of Federal Airway 220 (V–220) between McCook, NE, and Kearney, NE. The current description incorrectly includes a reference to Grande Island, NE.

EFFECTIVE DATE: 0901 UTC, August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 2001, a review of Federal airways in the Kearney, NE, area revealed that the current legal description of V–220 contained an inadvertent reference to Grande Island, NE. The description should refer to the ''Kearney, NE, 237° radial'' rather than the ''Grande Island, NE, 241° radial.'' This action corrects that error.

The Rule

This amendment to 14 CFR part 71 corrects the legal description of V–220 between McCook, NE, and Kearney, NE. Specifically, the ''Grande Island, NE, 241° radial'' is changed to read ''Kearney, NE, 237° radial.''

Since this action simply corrects the legal description by removing the reference to Grande Island, NE, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

This regulation is limited to an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since it has been determined that this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document will be published subsequently in the Order.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Revised]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * * *

V–220 [REVISED]

From Grand Junction, CO; INT Grand Junction, 075° and Rifle, CO, 163° radials; Rifle; Meeker, CO; Hayden, CO; Kremmling, CO; INT Kremmling 081° and Gill, CO, 234° radials; Gill; Akron, CO; INT Akron 094° and McCook, NE, 264° radials; McCook; INT McCook 072° and Kearney, NE, 237° radials; Kearney; Hastings, NE; Columbus, NE.

* * * * * *

Issued in Washington, DC, on April 29, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–11657 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–01–148]

RIN–2115–AE47

Drawbridge Operation Regulations; Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; request for comments.

SUMMARY: The Coast Guard is revising the operating regulation governing drawbridges over Chicago River waterways. This interim rule adds one bridge to the current list of bridges not required to open for navigation, and removes the requirement for two to open on signal for commercial vessels due to the recent increases in their vertical clearances. This interim rule also requires 12-hours advance notice from commercial vessels year-round for City of Chicago movable bridges; updates ownership of certain railroad bridges; and specifies rush hour times that City of Chicago bridges will not be required to open for any vessels.

DATES: This interim rule is effective June 10, 2002. Comments and related material must reach the Coast Guard on or before June 30, 2002.

ADDRESSES: You may mail comments and related material to Commander

(obr), Ninth Coast Guard District, 1240 East Ninth Street, Room 2019, Cleveland, OH, 44199–2060. Ninth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket (CGD09–01–148) and are available for inspection or copying at the address above between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Ninth Coast Guard District Bridge Branch, at (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments for or against this rule. Persons submitting comments should include names and addresses, identify the rulemaking (CGD09–01–148) and the specific section of this rule to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Public Meeting

The Coast Guard plans no public hearing. Individuals may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, we will hold a public hearing at a time and place announced by a subsequent notice in the **Federal Register**.

Regulatory Information

Commander, Ninth Coast Guard District, published a notice of proposed rulemaking (NPRM) on December 27, 2001 (66 FR 66865). No public hearing was requested, and none was held. The NPRM included some formatting errors that have been corrected in this interim rule. The text of the NPRM contained no errors.

The Coast Guard received one written comment. The writer requested that the morning rush-hour period when all city bridges may remain closed be altered. Instead of the originally proposed hours of 7 a.m. to 10 a.m., Monday through Friday, that the bridges could remain closed to vessels, the writer requested that the time be changed to 7 a.m. to 9:30 a.m. The Coast Guard determined that this change would properly provide for the reasonable needs of navigation and has been incorporated into this interim rule.

A non-written comment to the NPRM involved the time of year that the proposed change was open for comments from the public. The Coast Guard determined that it would be appropriate to issue this interim rule to make the regulation effective, but provide for another comment period during the boating season.

Background and Purpose

The City of Chicago requested that Commander, Ninth Coast Guard District, revise the operating regulations for Chicago City operated drawbridges over Chicago River waterways. The primary changes are: (1) Remove the requirements for Kinzie Street bridge over the North Branch and Cermak Road bridge over the South Branch to open on signal for commercial vessels due to restrictive clearances. Both bridges have been raised to provide vertical clearances consistent with other fixed and movable bridges on the Chicago River system. (2) Add Division Street bridge over the North Branch of Chicago River to the current list of drawbridges not required to open for vessels. (3) Require a 12-hour advance notice requirement for bridge openings from commercial vessels for City of Chicago movable bridges throughout the year. (4) Change rush hour times (7 a.m. to 9:30 a.m. and 4 p.m. to 6:30 p.m.—Monday through Friday, with the exception of Federal holidays) that City of Chicago bridges would not be required to open for any vessels.

Discussion of Interim Rule

The current operating regulations for Chicago River bridges are contained in 33 CFR 117.391. This section was last changed on October 6, 1995 (60 FR 52311) to establish opening schedules for recreational vessels. This rule only alters the sections pertaining to recreational vessels by specifying rush hour times (7 a.m. to 9:30 a.m. and 4 p.m. to 6:30 p.m.—Monday through Friday, with the exception of Federal holidays) that bridges would not be required to open.

The City of Chicago requested that both Kinzie Street bridge over North Branch and Cermak Road bridge over South Branch be granted the same status as all other City of Chicago bridges and only be required to open for commercial vessels if at least 12-hours advance notice is provided. The bridges have been raised to provide vertical clearances consistent with other fixed and movable bridges on the Chicago River system.

The City has also requested that Division Street bridge over North Branch not be required to open for vessels. This would place the bridge in the same status as all other City bridges for a vessel proceeding northbound on North Branch above Division Street. There is adequate clearance for commercial vessels equipped with retractable pilothouses to pass under each of these bridges. There are currently no recreational vessel facilities from Division Street northward that require the opening of drawbridges for masted vessels. A marina south of Division Street services masted vessels, therefore, all bridges southward are still required to open in accordance with the articles pertaining to recreational vessels. Bridge opening logs provided by the City indicate that the last request for a bridge opening at Division Street occurred in 1982.

Drawbridges allowed to stay closed to navigation through this rule may be required to be made operational again within a reasonable time if ordered by the District Commander in the future.

This rule also updates the current ownership of railroad bridges on Chicago River and removes the emergency provisions specifically listed in paragraph (e). These provisions apply to all drawbridges, as set out in 33 CFR 117.31, and need not be re-stated in this regulation.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the current and prospective facilities and needs of all navigation on the Chicago River system.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard has considered whether this rule will have

a significant impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

The identified small entities operating on Chicago River will not be significantly affected by the rule. Marinas located on the North Branch and South Branch of Chicago River will still have bridge openings during designated times. However, rush hour times, where no openings would be required, have been expanded. These entities do not require openings of bridges from Division Street northward on North Branch. In addition, the three identified commercial tug companies operating on Chicago River do not require openings of Chicago City bridges.

Therefore, the Coast Guard certifies under 5 U.S.C 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Ninth Coast Guard District, at the address above.

Collection of Information

This rule would call for no new collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3520).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132, and determined that it does not have federalism implications under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibility between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.391, revise the introductory text to the section, paragraph (a), paragraphs (b)(1)(iv) and (b)(2), and paragraph (c); and remove paragraphs (b)(3), (d), and (e), to read as follows:

§ 117.391 Chicago River.

The draws of the bridges operated by the City of Chicago over the Main Branch of Chicago River, the bridges on the North Branch of Chicago River from the Main Branch to North Halsted Street, mile 2.65, and bridges on the South Branch of Chicago River from the Main Branch to South Ashland Avenue, mile 4.47, shall operate as follows:

(a) For commercial vessels, all bridges shall open on signal if at least 12-hours advance notice is provided to the Chicago City Bridge Desk prior to the intended time of passage; except that, from Monday through Friday between the hours of 7 a.m. and 9:30 a.m., and between the hours of 4 p.m. and 6:30 p.m., except for Federal holidays, the draws need not open for the passage of vessels.

(b) * * *

(1) * * *

(iv) The draws shall open at times in addition to those listed in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, after notice has been given at least 20 hours in advance requesting passage for a flotilla of at least five vessels. However, the bridges need not open Monday through Friday from 7 a.m. to 9:30 a.m., and 4 p.m. to 6:30 p.m., except for Federal holidays.

(2) From December 1 through March 31, the draws shall open on signal if at least 48 hours notice is given. However, the bridges need not open Monday through Friday from 7 a.m. to 9:30 a.m., and 4 p.m. to 6:30 p.m., except for Federal holidays.

(c) The following bridges need not be opened for the passage of vessels: The draws of South Damen Avenue, mile 6.14, over South Branch of Chicago River; all highway drawbridges between South Western Avenue, mile 6.7, and Willow Springs Road, mile 19.4, over Chicago Sanitary and Ship Canal; North Halsted Street, mile 2.85, and Division Street, mile 2.99, over North Branch Canal of Chicago River; and Division Street, mile 3.30, North Avenue, mile 3.81, Cortland Avenue, mile 4.48, Webster Avenue, mile 4.85, North Ashland Avenue, mile 4.90, and Union Pacific Railroad, mile 5.01, over North Branch of Chicago River.

Dated: April 29, 2002.

James D. Hull,

Rear Admiral, Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 02–11717 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–01–037]

RIN 2115–AE84

Regulated Navigation Area; Savannah River, Georgia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary Regulated Navigation Area (RNA) on a portion of the Savannah River to regulate waterway traffic when vessels carrying Liquefied Natural Gas (LNG) are transiting or moored on the Savannah River. This action is necessary because of the size, draft, and volatile cargo of LNG tankships. This rule enhances public and maritime safety by minimizing the risk of collision, allision or grounding and the possible release of LNG.

DATES: This rule is effective from 12:01 a.m. on May 4, 2002 until 11:59 p.m. on June 30, 2002.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Savannah, Juliette Gordon Low Federal Building, Suite 1017, 100 W. Oglethorpe, Savannah, Georgia 31401. Coast Guard Marine Safety Office Savannah maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–01–037], will become part of this docket and will be available for inspection or copying at Marine Safety Office Savannah, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James Hanzalik at the Marine Safety Office Savannah; phone (912) 652–4353 extension 205.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 19, 2001 we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled ''Regulated Navigation Area; Savannah River, Georgia'' (66 FR 32915). The Coast Guard received 22 letters commenting on the proposed rule. No public hearing was requested, and none was held.

Since immediate action was necessary to protect the public from the dangers associated with transporting LNG, on October 10, 2001, we published a temporary final rule in the **Federal Register** entitled ''Regulated Navigation Area; Savannah River, Georgia'' (66 FR 51562) creating a temporary rule while we published a Supplemental Notice of Proposed Rulemaking (SNPRM) and received comments.

Due in part to the comments we received and changes to the initial NPRM, on December 14, 2001, we published a SNPRM in the **Federal Register** entitled ''Regulated Navigation Area; Savannah River, Georgia'' (66 FR 64778), offering the public the opportunity to comment on our revised proposal. The Coast Guard received three letters commenting on the supplemental proposed rule. No public hearing was requested, and none was held.

Because the original temporary rule has expired, the Coast Guard is issuing this temporary final rule to respond to the dangers associated with Liquefied Natural Gas (LNG) vessels while comments to the SNPRM are considered and the final rule is being prepared.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM because the terms in this temporary final rule have already been published for notice and comment in the **Federal Register** in the SNRPM (66 FR 64778) and previous temporary final rule (66 FR 51562) and publishing an additional NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States from the dangers associated with the transportation of LNG.

For the reasons cited in the summary, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Since early October 2001, the port of Savannah has received LNG tankships at the Southern LNG Elba Island facility. Due to the expiration of the original temporary final rule on March 31, 2002, this new temporary final rule is necessary to protect the safety of life and property on the navigable waters from hazards associated with LNG activities.

The Savannah River has a narrow and restricted channel with many bends. The LNG facility is located at one of these bends on Elba Island. The LNG tankship berth is located adjacent to and parallel with the toe of the shipping channel. Because of these factors, the hazardous nature of LNG and the substantial volume of deep draft vessel traffic in Savannah (approximately 5000 annual transits), the risk of collision or allision involving an LNG tankship must be addressed.

The Elba Island LNG facility has been struck by passing vessels twice in the past 20 years. In both instances the facility was inactive, however, damage to both the facility and vessels was extensive. The potential consequences from this type of allision would be significantly more severe with an LNG tankship moored at the Elba Island dock. This temporary final rule is needed to prevent incidents involving a LNG tankship in transit or while moored at the facility.

Discussion of Comments and Changes

The Coast Guard received twenty-two comment letters addressing the original notice of proposed rulemaking. These comments and our responses can be found in the SNRPM in the **Federal Register** (66 FR 64778) and the previous temporary final rule (66 FR 51562). The Coast Guard incorporated some of the comments and made content changes and other administrative and numbering corrections in the SNPRM published on December 14, 2001.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Only an estimated one percent of the annual transits on the Savannah River will be LNG tankships. Further, all LNG transits will be coordinated and scheduled with the pilots and the Coast Guard Captain of the Port to minimize port disruption and delays for other commercial traffic, and LNG tankships. Finally, requests to enter the RNA may be granted on a case-by-case basis by the Coast Guard Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this temporary rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities because LNG vessels will comprise an estimated one percent of the large commercial vessel transits on the Savannah River. Further, the tug escort requirements of this rule for vessels transiting past a moored LNG vessel will only affect an estimated 12 percent of all large commercial vessel transits on the River. Delays, if any, will be minimal because vessel speeds would be reduced regardless of tug requirements. Delays for inbound and outbound traffic due to LNG transits will be minimized through pre-transit conferences with the pilots and the Coast Guard Captain of the Port. Finally, the RNA requirements are less burdensome for smaller vessels, which are more likely to be small entities, because of the lower risk associated with these vessels.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this temporary rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Temporary § 165.T07–037 is added to read as follows:

§ 165.T07–037 Regulated Navigation Area; Savannah River, Georgia.

(a) *Regulated navigation area (RNA).* The Savannah River between Fort Jackson (32°04.93′ N, 081°02.19′ W) and the Savannah River Channel Entrance Sea Buoy is a regulated navigation area.

(b) *Definitions.* The following definitions are used in this section:

Bollard pull is an industry standard used for rating tug capabilities and is the pulling force imparted by the tug to the towline. It means the power that an escort tug can apply to its working line(s) when operating in a direct mode.

Direct mode is a towing technique which, for the purpose of this section, is defined as a method of operation by which a towing vessel generates by thrust alone; towline forces at an angle equal to or nearly equal to the towline, or thrust forces applied directly to the escorted vessel's hull.

Indirect mode is a towing technique which, for the purpose of this section, is defined as a method of operation by which an escorting towing vessel generates towline forces by a combination of thrust and hydrodynamic forces resulting from a presentation of the underwater body of the towing vessel at an oblique angle to the towline. This method increases the resultant bollard pull, thereby arresting and/or controlling the motion of an escorted vessel.

LNG tankship means a vessel as described in Title 46, Code of Federal Regulations, part 154.

Made-up means physically attached by cable, towline, or other secure means in such a way as to be immediately ready to exert force on a vessel being escorted.

Make-up means the act of, or preparations for becoming made-up.

Operator means the person who owns, operates, or is responsible for the operation of a facility or vessel.

Savannah River Channel Entrance Sea Buoy means the aid to navigation labeled R W ''T'' Mo (A) WHIS on the National Oceanic and Atmospheric Administration's (NOAA) Nautical Chart 11512.

Standby means immediately available, ready, and equipped to conduct operations.

Underway means that a vessel is not at anchor, made fast to the shore, or aground.

(c) *Applicability.* This section applies to all vessels operating within the RNA, including naval and other public vessels, except vessels that are engaged in the following operations:

(1) Law enforcement or search and rescue operations;

(2) Servicing aids to navigation;

(3) Surveying, maintenance, or improvement of waters in the RNA; or

(4) Actively engaged in escort, maneuvering or support duties for the LNG tankship.

(d) *Regulations.* (1) Restrictions on vessel operations while a LNG tankship is underway within the RNA.

(i) Except for a vessel that is moored at a marina, wharf, or pier, and remains moored, no vessel 1600 gross tons or greater is permitted within the RNA without the permission of the Captain of the Port (COTP).

(ii) All vessels under 1600 gross tons shall keep clear of transiting LNG tankships.

(iii) The owner, master, or operator of a vessel carrying liquefied natural gas (LNG) shall:

(A) Comply with the notice requirements of 33 CFR part 160. Updates are encouraged at least 12 hours before arrival at the RNA boundaries. The COTP may delay the vessel's entry into the RNA to accommodate other commercial traffic. LNG tankships are further encouraged to include in their notice a report of the vessel's propulsion and machinery status and any outstanding recommendations or deficiencies identified by the vessel's classification society and, for foreign flag vessels, any outstanding deficiencies identified by the vessel's flag state.

(B) Obtain permission from the COTP before commencing the transit into the RNA.

(C) While transiting, make security broadcasts every 15 minutes as recommended by the U.S. Coast Pilot 4 Atlantic Coast. The person directing the vessel must also notify the COTP telephonically or by radio on channel 13 or 16 when the vessel is at the following locations: Sea Buoy, Savannah Jetties, and Fields Cut.

(D) Not enter or get underway within the RNA if visibility during the transit is not sufficient to safely navigate the channel, and/or wind speed is, or is expected to be, greater than 25 knots.

(E) While transiting the RNA, the LNG tankship shall have sufficient towing vessel escorts.

(2) Requirements for LNG facilities:

(i) The operator of a facility where a LNG tankship is moored shall station and provide a minimum of two escort towing vessels each with a minimum of 100,000 pounds of bollard pull, 4,000 horsepower and capable of safely operating in the indirect mode, to escort transiting vessels 1600 gross tons or greater past the moored LNG tankship.

(ii) In addition to the two towing vessels required by paragraph (d)(2)(i) of this section, the operator of the facility where the LNG tankship is moored shall provide at least one standby towing vessel of sufficient capacity to take appropriate actions in an emergency as directed by the LNG vessel bridge watch.

(3) Requirements for vessel operations while a LNG tankship is moored:

(i) While moored within the RNA, LNG tankships shall maintain a bridge watch of appropriate personnel to monitor vessels passing under escort and to coordinate the actions of the standby towing vessel required in paragraph (d)(2)(ii) of this section in the event of emergency.

(ii) Transiting vessels 1600 gross tons or greater, when passing a moored LNG tankship, shall have a minimum of two towing vessels, each with a minimum capacity of 100,000 pounds of bollard pull, 4,000 horsepower, and the ability to operate safely in the indirect mode, made-up in such a way as to be immediately available to arrest and/or control the motion of an escorted vessel in the event of steering, propulsion or other casualty. While it is anticipated that vessels will utilize the facility provided towing vessel services required in paragraph (d)(2)(i) of this section, this regulation does not preclude escorted vessel operators from providing their own towing vessel escorts, provided they meet the requirements of this part.

(A) Outbound vessels shall be made-up and escorted from Bight Channel Light 46 until the vessel is safely past the LNG dock.

(B) Inbound vessels shall be made-up and escorted from Elba Island Light 37 until the vessel is safely past the LNG dock.

(iii) All vessels of less than 1600 gross tons shall not approach within 70 yards of a LNG tankship.

(e) *LNG Schedule.* The Captain of the Port will issue a Broadcast Notice to Mariners to inform the marine community of scheduled LNG tankship activities during which the restrictions imposed by this section are in effect.

(f) *Waivers.*

(1) The COTP may waive any requirement in this section, if the COTP finds that it is in the best interest of safety or in the interest of national security.

(2) An application for a waiver of these requirements must state the compelling need for the waiver and describe the proposed operation and methods by which adequate levels of safety are to be obtained.

(g) *Enforcement.* Violations of this RNA should be reported to the Captain of the Port, Savannah, at (912) 652–4353. In accordance with the general regulations in § 165.13 of this part, no person may cause or authorize the operation of a vessel in the regulated navigation area contrary to the regulations.

Dated: May 2, 2002.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 02–11716 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV 060–6019a; FRL–7208–4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Nitrogen Oxides Budget Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The revision was submitted in response to EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' The revision establishes and requires a nitrogen oxides (NO_X) allowance trading program for large electric generating and industrial units, beginning in 2004, as well as requirements for reductions in NO_X emissions from cement manufacturing kilns. The intended effect of this action is to approve West Virginia's NO_X Budget Trading Program because it addresses the requirements of the NO_X SIP Call. On December 26, 2000, EPA made a finding that West Virginia had failed to submit a SIP in response to the NO_X SIP Call, thus starting the 18 and 24 month clocks, respectively, for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP). On May 1, 2002, West Virginia submitted, as a SIP revision, its NO_X Budget Trading Program in response to the NO_X SIP Call. EPA found that SIP submission complete on May 1, 2002, thereby halting the sanctions clocks. Upon approval of this SIP revision, both the sanctions clocks and EPA's FIP obligation are terminated. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on July 9, 2002 without further notice, unless EPA receives adverse written comment by June 10, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, S.E., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, or by e-mail at *fernandez.cristina@epa.gov.* Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On May 1, 2002, the West Virginia Department of Environmental Protection submitted a revision to its SIP to address the requirements of the NO_X SIP Call. The revision consists of the adoption of Rule 45CSR26—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units and Rule 45CSR1—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides. The information in this section of this document is organized as follows:

I. EPA's Action

A. What Action Is EPA Taking in This Final Rulemaking?

EPA is taking direct final action to approve the West Virginia NO_X Budget Trading Program submitted as a SIP revision on May 1, 2002. Upon approval of this SIP revision, both the sanctions clocks and EPA's FIP obligation are terminated.

B. What Are the General NO_X SIP Call Requirements?

On October 27, 1998 (63 FR 57356), EPA published a final rule entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' The NO_X SIP Call requires the District of Columbia and 22 States, including West Virginia, to meet statewide NO_X emission budgets during the five-month period from May 1 through September 30. By meeting these budgets the states will reduce the amount of ground level ozone that is transported across the eastern United States. EPA has previously determined state-wide NO_X emission budgets for each affected jurisdiction to be met by the year 2007. EPA identified NO_X emission reductions, by source category, that could be achieved by using cost-effective measures. The source categories included were electric generating units (EGUs), non-electric generating units (non-EGUs), area sources, nonroad mobile sources and highway sources. However, the NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. In the NO_X SIP Call rule's preamble, EPA suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and electricity generating units would provide a highly cost effective means for States to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lbs NO_X/MMBtu) at EGUs,

multiplied by the projected heat input (MMBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407, October 27, 1998. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_X SIP Call state budgets also assumed, on average, a 30 percent NO_X reduction from cement kilns, a 60 percent reduction from industrial boilers and combustion turbines, and a 90 percent reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 MMBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rule included a model NO_X allowance trading regulation, called ''NO_X Budget Trading Program for State Implementation Plans'' (40 CFR part 96), that could be used by states to develop their regulations. The NO_X SIP Call rulemaking explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by EPA. See 63 FR 57458–57459, October 27, 1998.

EPA conducted several comment periods on various aspects of the NO_X SIP Call emissions inventories. On March 2, 2000 (65 FR 11222), EPA published additional technical amendments to the NO_X SIP Call. The March 2, 2000 final rulemaking established the inventories upon which West Virginia's final budget is based.

A number of parties, including certain states as well as industry and labor groups, challenged the October 27, 1998 (63 FR 57356) NO_X SIP Call Rule. On March 3, 2000, the D.C. Circuit issued its decision on the NO_X SIP Call ruling in favor of EPA on all of the major issues. *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000). However, the Court remanded certain matters for further rulemaking by EPA. EPA recently published a final notice that addresses one of the remanded issues and expects to publish this year another final notice that addresses the remaining remanded issues. Any additional emissions reductions required as a result of the final rulemaking will be reflected in the second phase portion (Phase II) of the NO_X SIP Call rule. West Virginia will be required to submit SIP revisions to address the Phase II of the NO_X SIP Call Rule.

C. What Is EPA's NO_X Budget Trading Program?

EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, sets forth a NO_X emissions trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998 final rulemaking contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514–57538 and 40 CFR part 96. In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a ''cap and trade'' program.

In a cap and trade program, the state or EPA sets a regulatory limit, or emissions budget, of mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, e.g., one ton of airborne NO_X. At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner.

D. What Standards Did EPA Use To Evaluate West Virginia's Submittal?

The final NO_X SIP Call rule included a model NO_X budget trading program regulation at 40 CFR part 96. EPA used the model rule and 40 CFR 51.121 and 51.122 to evaluate West Virginia's NO_X Budget Trading Program.

II. West Virginia's NO_X Budget Trading Program

A. When Did West Virginia Submit the SIP Revision to EPA in Response to the NO_X SIP Call?

On May 1, 2002, the West Virginia Department of Environmental Protection submitted a revision to its SIP to address the requirements of the NO_X SIP Call.

B. What Is West Virginia's NO_X Budget Program?

West Virginia's SIP revision to address the requirements of the NO_X SIP Call consists of the adoption and submittal of Rule 45CSR26—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units and Rule 45CSR1—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides.

Rule 45CSR26 establishes and requires a NO_X allowance trading program for large electric generating units. The sections of Rule 45CSR26—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units which comprise West Virginia's SIP revision are as follows: sections 45–26–1 through 45–26–7, General Provisions; sections 45–26–10 through 45–26–14, NO_X Authorized Account Representative; sections 45–26–20 through 45–26–24, Permits; sections 45–26–30 through 45–26–31, Compliance Certifications; sections 45–26–40 through 45–26–43, NO_X Allowance Allocations; sections 45–26–50 through 45–26–57, Accounting Process for Deposit, Use and Transfer of Allowances; sections 45–26–60 through 45–26–62, NO_X Allowance Transfers; and sections 45–26–70 through 45–26–76, Monitoring, Recordkeeping and Reporting Requirements.

Rule 45CSR1 establishes and requires a NO_X allowance trading program for large non-electric generating units and reductions of NO_X emissions from cement manufacturing kilns. The sections of Rule 45CSR1—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides which comprise West Virginia's SIP revision are as follows: sections 45–1–1 through 45–1–7, General Provisions; sections 45–1–10 through 45–1–14, NO_X Authorized Account Representative; sections 45–1–20 through 45–1–24, Permits; sections 45–1–30 through 45–1–31, Compliance Certifications; sections 45–1–40 through 45–1–43, NO_X Allowance Allocations;

sections 45–1–50 through 45–1–57, Accounting Process for Deposit, Use and Transfer of Allowances; sections 45–1–60 through 45–1–62, NO_X Allowance Transfers; sections 45–1–70 through 45–1–76, Monitoring, Recordkeeping and Reporting Requirements; sections 45–1–80 through 45–1–88, Opt-In Requirements; section 45–1–100, Requirements for Emissions of NO_X from Cement Manufacturing Kilns.

Rule 45CSR26 and Rule 45CSR1 establish a NO_X cap and allowance trading program with a budget of 29,043 tons of NO_X for the ozone seasons of 2004 and beyond. The NO_X budgets for large electric generating units and large non-electric generating units are 26,859 and 2,184 tons of NO_X per ozone season, respectively. Cement manufacturing kilns are not part of the trading program. West Virginia voluntarily chose to follow EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, that sets forth a NO_X emissions trading program for large EGUs and non-EGUs. Because West Virginia's NO_X Budget Trading Program is based upon EPA's model rule, West Virginia sources are allowed to participate in the interstate NO_X allowance trading program that EPA will administer for the participating states. West Virginia has adopted regulations that are substantively identical to 40 CFR part 96. Therefore, pursuant to 40 CFR 51.121(p)(1), West Virginia's SIP revision is automatically approved as satisfying its portion of NO_X emission reductions.

Under the NO_X Budget Trading Program, West Virginia allocates NO_X allowances to the EGUs and non-EGUs units that are affected by these requirements. The NO_X trading program generally applies to fossil fuel fired EGUs with a nameplate capacity equal to or greater than 25 MW that sell any amount of electricity as well as to non-EGUs that have a heat input capacity equal to or greater than 250 MMBtu per hour. Each NO_X allowance permits a unit to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations. Owners will monitor their unit's NO_X emissions by using systems that meet the requirements of 40 CFR part 75, subpart H and will report resulting data to EPA electronically. Each budget unit complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a unit holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or title IV (the Federal Acid Rain program).

C. What Is the Result of EPA's Evaluation of West Virginia's Program?

EPA has evaluated West Virginia's May 1, 2002 SIP submittal and finds it approvable. The West Virginia NO_X Budget Trading Program is consistent with EPA's guidance and addresses the requirements of the NO_X SIP Call. EPA finds the NO_X control measures in West Virginia's NO_X Budget Trading Program and for the cement manufacturing kilns approvable. The May 1, 2002 submittal will strengthen West Virginia's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2004.

West Virginia's SIP revision does not establish requirements for stationary internal combustion engines. West Virginia will be required to submit SIP revisions to address any additional emission reductions required to meet the State's overall emissions budget. In addition, West Virginia's submittal does not rely on any additional reductions beyond the anticipated federal measures in the mobile and area source categories.

On December 26, 2000 (65 FR 81366), EPA made a finding that West Virginia had failed to submit a SIP response to the NO_X SIP Call, thus starting 18 and 24 month clocks for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP) within 24 months. The effective date of that finding was January 25, 2001. On May 1, 2002, West Virginia submitted a SIP revision to satisfy the NO_X SIP Call. EPA found that SIP submission complete on May 1, 2002, thus, halting the sanctions clocks and terminating EPA's FIP obligation.

III. Final Action

EPA is approving West Virginia's Rules 45CSR45 and 45CSR1, submitted as a SIP revision on May 1, 2002. EPA finds that West Virginia's NO_X Budget Trading Program and the requirements for the cement manufacturing kilns are fully approvable because they satisfy the requirements of the NO_X SIP Call. Approval of this SIP revision fully terminates both the sanctions clocks and EPA's FIP obligation which officially started on January 25, 2001, the effective date of EPA's December 26, 2000 finding (FR 65 81366).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 9, 2002 without further notice unless EPA receives adverse comment by June 10, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving West Virginia NO_X Budget Trading Program as satisfying the NO_X SIP Call may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 1, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraphs (c)(46) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(46) Revisions to the West Virginia Rules 45CSR26 and 45CSR1 submitted on May 1, 2002 by the West Virginia Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of May 1, 2002 from the Secretary of the West Virginia Department of Environmental Protection transmitting rules 45CSR26 and 45CSR1 to implement West Virginia's NO_X Budget Trading Program and requirements for reductions in NO_X emissions from cement manufacturing kilns.

(B) West Virginia Rule Title 45 Series 26, ''Nitrogen Oxides Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units,'' consisting of sections 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 20, 21, 22, 23, 24, 30, 31, 40, 41, 42, 43, 50, 51, 52, 53, 54, 55, 56, 57, 60, 61, 62, 70, 71, 72, 73, 74, 75, and 76 effective May 1, 2002.

(C) West Virginia Rule Title 45 Series 1, ''Nitrogen Oxides Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides,'' consisting of sections 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 20, 21, 22, 23, 24, 30, 31, 40, 41, 42, 43, 50, 51, 52, 53, 54, 55, 56, 57, 60, 61, 62, 70, 71, 72, 73, 74, 75, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 100, effective May 1, 2002.

(ii) Additional Material—Other materials submitted by the State of West Virginia in support of and pertaining to Rules 45CSR26 and 45CSR1 listed in paragraphs (c)(46)(i)(B) and (C) of this section.

[FR Doc. 02–11722 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 67, No. 91
Friday, May 10, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–33–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Artouste III Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to Turbomeca Artouste III series turboshaft engines with injection wheels part numbers (P/N's) 218.25.700.0, 218.25.704.0, 243.25.709.0, 243.25.713.0, 0.218.27.705.0, 0.218.27.709.0, and 0.218.27.713.0 installed. That AD currently requires smoke emission checks after every ground engine shutdown. If smoke is detected, that AD requires inspecting for fuel flow. If fuel flow is not detected, the engine may have injection wheel cracks, which requires removing the engine from service for repair. If fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which requires removing the electric fuel cock from service and replacing with a serviceable part. That AD was prompted by reports of cracked injection wheels. This proposal would, in addition to the requirements in the existing AD, require the smoke emissions to be checked after the last flight of the day as opposed to after every flight as required by the original AD. This proposal would also require inspection of central labyrinths not previously inspected or not replaced after the engine logged 1,500 operating hours, and, replacement if necessary. This proposal would also require the removal of injection wheels at a new lower life limit. This proposal is prompted by reports and analyses of in-flight shutdowns (IFSD's) occurring since the issuance of AD 2000–06–12. The actions specified by the proposed AD are intended to prevent injection wheel cracks and excessive central labyrinth wear, which could result in an IFSD.

DATES: Comments must be received by July 9, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–33–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in the proposed rule may be obtained from Turbomeca, 40220 Tarnos, France; telephone +33 05 59 64 40 00, fax +33 05 59 64 60 80. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–33–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–33–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On March 21, 2000, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 2000–06–12, Amendment 39–11653 (65 FR 19300, April 11, 2000), to require smoke emission checks after every ground engine shutdown. If smoke is detected, that AD requires inspecting for fuel flow. If fuel flow is not detected, the engine may have injection wheel cracks, which requires removing the engine from service for repair. If fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which requires removing the electric fuel cock from service and replacing with a serviceable part. The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Turbomeca Artouste III B–B1–D series turboshaft engines. The DGAC advises that cracks have been reported on the rear face of the injection wheels, which can lead to fuel leakage into the turbine shaft tube during operation. When the engine is shut down, fuel flows into the combustion chamber, which could result in a slight increase of rundown time and/or emission of smoke through the exhaust pipe, the air intake, or the turbine casing drain after the rotating assembly has stopped. This condition

may be caused by the thermal stresses to which the injection wheel is subjected or a malfunctioning electric fuel cock. These conditions, if not corrected, could result in injection wheel cracks, which could result in an IFSD.

Since AD 2000–06–12 was issued, further analyses of the IFSD that prompted that AD, and a subsequent IFSD have concluded that the root cause of those IFSD's was excessive wear of the central labyrinth. The injection wheel crack could still cause an IFSD but the labyrinth had caused the IFSD, that prompted this proposed AD. The wear or deterioration of the bronze lips of the central labyrinth may result in overheating and damage through creeping of the turbine shaft and lead to an uncommanded engine shutdown. Therefore, this proposal would require smoke emission checks, inspection of central labyrinth, and removal of injection wheel at a new lower life limit.

Manufacturer's Service Information

Turbomeca has issued Artouste III Service Bulletin (SB) No A218 72 0099, Update 1, dated June 6, 2001, that specifies procedures for smoke emission checks, and fuel flow inspections if smoke is detected. Turbomeca has also issued Artouste III SB No. A218 72 0100, Update 1, dated March 13, 2001, that specifies procedures for inspection of central labyrinths not previously inspected or not replaced after the engine logged 1,500 operating hours, and, replacement if necessary. The DGAC classified these SB's as mandatory and issued AD 2001–235(A) in order to assure the airworthiness of these Turbomeca Artouste III series engines in France.

Differences Between This AD and the Manufacturer's Service Information

Although the manufacturer calls for a check for smoke emission through the exhaust pipe, air intake, or turbine casing drain during rundown and after every engine shutdown, this proposal will require the same check, except after the last flight of the day. Also, although the manufacturer calls for inspection of the central labyrinth based on several cycle/hours ratios, within certain hours or months from the published date of the SB, this proposal will require inspection using the same criteria, except from the effective date of this AD.

Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca Artouste III series turboshaft engines of the same type design that are used on helicopters registered in the United States, the proposed AD would require:

- Smoke emission checks after each last flight of the day.
- If smoke is detected, then inspection for fuel flow.
- If fuel flow is not detected, the engine may have injection wheel cracks, which would require removing the engine from service for repair.
- If fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which would require removing the electric fuel cock from service and replacing with a serviceable part.
- Inspection of central labyrinths not previously inspected or not replaced after the engine logged 1,500 operating hours, and, replacement if necessary.
- Removal of injection wheel part number 0.218.27.713.0 at a new lower life limit.

The actions would be required to be done in accordance with the service bulletins described previously.

Economic Analysis

There are approximately 2,279 engines of the affected design in the worldwide fleet. The FAA estimates that 184 engines installed on helicopters of U.S. registry would be affected by this AD, that it would take approximately one work hour per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,500 per engine. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $655,040.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with State authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11653, (65 FR 19300, April 11, 2000), and by adding a new airworthiness directive:

Turbomeca: Docket No. 99–NE–33–AD. Supersedes AD 2000–06–12, Amendment 39–11653.

Applicability

This airworthiness directive (AD) is applicable to Turbomeca Artouste III B–B1–D series turboshaft engines with injection wheels part numbers (P/N's) 218.25.700.0, 218.25.704.0, 243.25.709.0, 243.25.713.0, 0.218.27.705.0, 0.218.27.709.0, and 0.218.27.713.0. These engines are installed on, but not limited to Eurocopter SA 315 LAMA and SA 316 Alouette III helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent injection wheel cracks and excessive central labyrinth wear, which could result in an in-flight shutdown (IFSD), do the following:

Smoke Check

(a) Do the following in accordance with Turbomeca Artouste III Service Bulletin (SB) No. 218 72 0099, Update 1, dated June 6, 2001:

(1) After the last flight of every day, check for smoke emission through the exhaust pipe, air intake, or turbine casing drain during rundown.

(2) If smoke is detected, inspect for fuel flow in accordance with paragraph 2.B.(1) and 2.B.(2) of the SB.

(i) If fuel flow is not detected, remove the engine from service and replace with a serviceable engine before further flight.

(ii) If fuel flow is detected, remove the electric fuel cock from service and replace with a serviceable part in accordance with section 2.B.(4) and 2.B.(5) of the referenced SB.

(iii) Before entry into service, perform an engine ground run and check the fuel system again for smoke emission through the exhaust pipe, air intake, or turbine casing drain during engine rundown and after shutdown. If smoke emission still remains after replacement of the electric fuel cock, before further flight, remove the engine from service and replace with a serviceable engine.

Central Labyrinth Inspection

(b) If the central labyrinth has not been inspected or replaced since engine accumulation of 1,500 flight hours (FH) or more time-since-new (TSN) or time-since-last-overhaul (TSO), perform the checks and inspections, and replace if necessary the central labyrinth, in accordance with paragraph 2 of the Instructions of Turbomeca Artouste III SB No. 218 72 0100, Update 1, dated March 13, 2001 and the following Table 1:

TABLE 1.—INSPECTION SCHEDULE

For engine hours TSN, or TSO that are:	And cycles/FH ratio is:	Then inspect central labyrinth:
(1) More than 1,500 but fewer than 2,000	(i) Above 2 cycles	Within 250 FH time-in-service (TIS) after the effective date of this AD.
	(ii) Below or equal to 2 cycles	Within 500 FH TIS after the effective date of this AD.
(2) 2,000 or more	Not applicable	Within 50 FH TIS or 6 months after the effective date of this AD, whichever occurs first.

Injection Wheel New Life Limits

(c) Injection wheels are now life-limited to no more than 3,000 FH TSN or TSO, or 6,000 cycles-since-new (CSN) or cycles-since overhaul (CSO), whichever occurs first. Replace injection wheels that are over the life limits, before further flight, and replace all other injection wheels before reaching the new life limits.

(d) Do not install any injection wheels that have accumulated 3,000 FH TIS or TSO, or 6,000 CSN or CSO onto any engine.

(e) For the purpose of this AD, a serviceable engine is defined as an engine that does not exhibit smoke emission.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile airworthiness directive 2001–235(A).

Issued in Burlington, Massachusetts, on May 2, 2002.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–11667 Filed 5–9–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 02N–0058]

RIN 0910–AA01

Pediculicide Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) pediculicide drug products to revise labeling for the statement of identity, warnings, directions, and other required statements. Pediculicide drug products are used for the treatment of head, pubic (crab), and body lice. This proposal is part of FDA's ongoing review of OTC drug products.

DATES: Submit written or electronic comments by August 8, 2002; written comments on the agency's economic impact determination by August 8, 2002. See section VIII for the effective and compliance dates of any final rule that may publish based on this proposal.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Michael T. Benson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 14, 1993 (58 FR 65452), the agency published a final rule in the form of a final monograph in part 358 (21 CFR part 358, subpart G) establishing conditions under which OTC pediculicide drug products are generally recognized as safe and effective. The effective date of the final rule was December 14, 1994. Since that time, the agency has determined that labeling in the statement of identity, warnings, directions, and certain other required statements in the pediculicide monograph should be amended to

increase the probability of treatment success with these products.

In the **Federal Register** of March 17, 1999 (64 FR 13254), the agency published a final rule for standardized format and content requirements for OTC drug product labeling in § 201.66 (21 CFR 201.66). In that same final rule (64 FR 13254 at 13296), the agency amended the final monograph for OTC pediculicide drug products and removed the requirement in § 358.650(d)(1) that the direction ''Important: Read warnings before using'' be printed in all capital letters. The sentence now needs only to appear in boldface type with only the first letter in the word ''Important'' and the word ''Read'' capitalized.

II. The Agency's Proposal

A. Introduction

The agency is proposing to revise the statement of identity, warnings, directions, and certain other required statements in the monograph for OTC pediculicide drug products for two reasons: (1) To be in conformance with the new labeling format in § 201.66, and (2) to increase the probability of treatment success based on some of the new information being added to the monograph. The agency is also revising the indications section to the new labeling format in § 201.66.

Several reports have emphasized the importance of combing and environmental control for treatment success and for prevention of reinfestation (Refs. 1 through 5). In 1998, Bainbridge et al. (Ref. 6) reported high clinical efficacy (79/79 treatment successes, defined as no live lice and no nits within 0.25 inches of the scalp, after a second treatment using pyrethrum extract with piperonyl butoxide on day 14 of pediculicide treatment). In the study, the hair was saturated with the pediculicide according to label directions and was thoroughly combed to remove lice and nits. Parents and guardians were provided with instructions regarding treatment of personal contacts and family members of cases, as well as instructed on proper cleaning of the home. Family members were provided with a marketed pediculicide shampoo to use at home to prevent reinfestation of the affected patients if they declined to participate in the study.

Other authors state that thorough combing is necessary to remove lice and eggs that the pediculicide does not kill (Refs. 1, 2, and 5). Because lice removed from the human host can survive up to 2 days and nits can survive away from the host for up to 10 days (Ref. 3), the agency believes that additional information about careful disposal of lice and nits combed out of the hair is very important and useful to consumers.

Other information can also enhance the effectiveness of combing. Lice and nits are small and hard to see; thus, good lighting is essential and magnification is recommended (Refs. 4 and 5). Before hatching, nits are small, whitish-yellow ovals that are found close to the scalp, cemented firmly to the hair shaft (Ref. 4). Nits hatch within 7 to 10 days. Once hatched, the empty, white nit case remains glued to the hair. When searching the hair, other small white objects may be easily seen. If these objects are displaced easily from the hair, they are not nits and are most likely dandruff (Refs. 1, 3, and 4).

Lice are transmitted by actual contact with infested persons, bedding materials, or articles of clothing (Refs. 2 through 5). To prevent reinfestation, environmental measures need to be taken as indicated in § 358.650(c) of the monograph. Clothing, linens, and towels need to be washed in hot water and dried in a hot dryer for at least 20 minutes. Vacuuming of rugs, carpets, upholstered furniture, and car seats is also recommended. Anything that cannot be laundered or vacuumed should be sealed in a plastic bag for 4 weeks. Personal combs and brushes may be disinfected by soaking in hot water (above 54 °C (130 °F)) for 5 to 10 minutes. As discussed above, the agency believes that it is necessary to inspect and treat family members and personal contacts and to clean or dispose of fomites[1] properly (Refs. 3, 4, and 5). These ancillary measures contributed to the high treatment success rate in the Bainbridge study (Ref. 6). The agency believes that using plain language in informing consumers about the reasons for label recommendations would improve compliance.

A second treatment after 7 to 10 days is essential because the first treatment: (1) May not kill all of the lice, (2) does not have any effect on nits within the first 4 days after the eggs have been laid because the nervous system has not yet developed in the louse embryo (Refs. 1, 4, and 5), and (3) has no residual lice-killing effect after the product is washed out of hair.

B. The Agency's Specific Recommendations

The current monograph statement of identity in § 358.650(a) provides for ''pediculicide (lice treatment)'' or ''lice treatment.'' Because the term ''pediculicide'' is extra wording that is not needed, the agency is proposing to remove it and to limit the statement of identity to ''lice treatment.''

The agency is proposing to convert the labeling in § 358.650(c)(1), (c)(2), and (c)(3) to the format required in § 201.66(c), using the subheadings ''Do not use,'' ''Ask a doctor before use if you have,'' ''When using this product,'' and ''Stop use and ask a doctor if.'' The proposed labeling includes bullets in accord with § 201.66(d)(4). The agency is deleting § 358.650(c)(4) because that section is currently addressed by § 330.1(i)(23) (21 CFR 330.1(i)(23)).

The agency is revising the warning statement ''Use with caution on persons allergic to ragweed'' in § 358.650(c)(1) to read: ''Ask a doctor before use if you are [bullet] allergic to ragweed. May cause breathing difficulty or an asthmatic attack.'' This warning would appear in new § 358.650(c)(3).

The current warnings in § 358.650(c)(2) state in part:

> * * * Do not use near the eyes or permit contact with mucous membranes, such as inside the nose, mouth, or vagina, as irritation may occur. Keep out of eyes when rinsing hair. Adults and children: Close eyes tightly and do not open eyes until product is rinsed out. Also, protect children's eyes with washcloth, towel or other suitable material, or by a similar method. * * *

The agency is shortening these warning statements by deleting: (1) ''* * * or permit contact with mucous membranes, such as * * *'' and ''* * * as irritation may occur'' from the first sentence, (2) ''Adults and children:'' from the third sentence, and (3) ''Also,'' ''children's'' and ''or other suitable material, or by a similar method'' from the fourth sentence. The revised warnings appear under the subheadings ''Do not use'' (new § 358.650(c)(2)) or ''When using this product'' (new § 358.650(c)(4)), as follows: ''Do not use [bullet] near eyes [bullet] inside nose, mouth, or vagina'' and ''When using this product [bullet] keep eyes tightly closed and protect eyes with a washcloth or towel [bullet] if product gets in eyes, flush with water right away [bullet] scalp itching or redness may occur.''

The agency is making two minor changes in the last warning statement in current § 358.650(c)(2) that states ''If product gets into the eyes, immediately flush with water.'' The agency is substituting ''in'' for ''into'' and ''right away'' for ''immediately,'' and moving ''right away'' to the end of the warning.

The current warnings in § 358.650(c)(3) state ''If skin irritation or infection is present or develops, discontinue use and consult a doctor.

[1] Items such as a book, wooden object, or clothing that is not in itself harmful, but is able to harbor lice or nits and thus may serve as an agent of transmission of an infestation.

Consult a doctor if infestation of eyebrows or eyelashes occurs.'' The agency is revising the first sentence and placing it in new § 358.650(c)(5) to read: ''Stop use and ask a doctor if [bullet] skin or scalp irritation continues or infection occurs.'' The agency is moving the second sentence to under the ''Do not use'' subheading in new § 358.650(c)(2) to read ''[bullet] on lice in eyebrows or eyelashes. See a doctor.''

Table 1 shows how, using the format in § 201.66(c)(5), the agency is revising the warnings in § 358.650(c) of the final monograph in this proposed amendment.

TABLE 1.—REVISION OF FINAL MONOGRAPH WARNINGS TO NEW FORMAT

Pediculicide Final Monograph	Proposed Amendment to Monograph
For external use only.	For external use only.[2]
Do not use near the eyes or permit contact with mucous membranes, such as inside the nose, mouth, or vagina, as irritation may occur. Consult a doctor if infestation of eyebrows or eyelashes occurs.	Do not use • near eyes • inside nose, mouth, or vagina • on lice in eyebrows or eyelashes. See a doctor.
Use with caution on persons allergic to ragweed.	Ask a doctor before use if you are • allergic to ragweed. May cause breathing difficulty or an asthmatic attack.
Keep out of eyes when rinsing hair. Adults and children: Close eyes tightly and do not open eyes until product is rinsed out. Also, protect children's eyes with washcloth, towel or other suitable material, or by a similar method. If product gets into the eyes, immediately flush with water.	When using this product • keep eyes tightly closed and protect eyes with a washcloth or towel • if product gets in eyes, flush with water right away • scalp itching or redness may occur
If skin irritation or infection is present or develops, discontinue use and consult a doctor.	Stop use and ask a doctor if • breathing difficulty occurs • eye irritation occurs • skin or scalp irritation continues or infection occurs

[2] In bold type on the line immediately following the line for the Warnings heading. See § 201.66(c)(5)(i) and (d)(6) of this chapter.

The agency is amending the ''Directions'' in § 358.650(d) to provide greater detail. The directions for all products would include directions for adults and children 2 years and over and direct consumers to ask a doctor for children under 2 years. The directions would include new captions entitled ''Treat'' and ''Remove lice and their eggs (nits)'' and information to see a doctor for other treatments if infestation continues. The directions for head lice treatment products would also include a new caption entitled ''Inspect.'' The proposed labeling includes bullets in accord with § 201.66(d)(4).

The current direction in § 358.650(d)(1) reads: ''*For all products.* 'Important: Read warnings before using.' [statement in boldface type].'' The agency is revising this direction by changing ''using'' to ''use,'' and requiring this statement to appear first. This statement appears in new § 358.650(d)(1).

The agency is adding a heading in new § 358.650(d)(2) that states: ''adults and children 2 years and over:'' [in bold type]. The agency has a safety concern that there may be a greater likelihood of percutaneous absorption of topically applied pediculicide drug products by children under 2 years of age.

The agency is adding new § 358.650(d)(3) for head lice treatment products. This new section adds the following statements: ''Inspect [bullet] check each household member with a magnifying glass in bright light for lice/nits (eggs) [bullet] look for tiny nits near scalp, beginning at back of neck and behind ears [bullet] examine small sections of hair at a time [bullet] unlike dandruff which moves when touched, nits stick to the hair [bullet] if either lice or nits are found, treat with this product''.

The agency is moving the information currently in § 358.650(d)(2) and (d)(3) to new § 358.650(d)(4) for manufacturers to select the directions for either shampoo or nonshampoo products. The agency is revising some of the text in the new paragraph and adding the phrases ''for head lice, first apply behind ears and to back of neck,'' ''use warm water to form a lather, shampoo, then thoroughly rinse'' for shampoo products; ''wash area thoroughly with warm water and soap or shampoo'' for nonshampoo products; and ''for head lice, towel dry hair and comb out tangles'' for both types of products.

The agency is adding new ''Remove lice and their eggs (nits)'' information for all products in § 358.650(d)(5). This new information adds the following statements:

[bullet] use a fine-tooth or special lice/nit comb. Remove any remaining nits by hand (using a throw-away glove). [bullet] hair should remain slightly damp while removing nits [bullet] if hair dries during combing, dampen slightly with water [bullet] for head lice, part hair into sections. Do one section at a time starting on top of head. Longer hair may take 1 to 2 hours. [bullet] lift a 1 to 2 inch wide strand of hair. Place comb as close to scalp as possible and comb with a firm, even motion away from scalp. [bullet] pin back each strand of hair after combing [bullet] clean comb often. Wipe nits away with tissue and discard in a plastic bag. Seal bag and discard to prevent lice from coming back. [bullet] after combing, thoroughly recheck for lice/nits. Repeat combing if necessary. [bullet] check daily for any lice/nits that you missed.

The agency is proposing new § 358.650(d)(6) and (d)(7) as follows: ''[bullet] a second treatment must be done in 7 to 10 days to kill any newly hatched lice [bullet] if infestation continues, see a doctor for other treatments''. Paragraph (d)(6) incorporates information in existing § 358.650(d)(2) and (d)(3).

Table 2 shows how the agency is revising the directions in § 358.650(d) of the final monograph in this proposed amendment.

TABLE 2.—REVISION OF FINAL MONOGRAPH DIRECTIONS TO NEW FORMAT

Pediculicide Final Monograph	Proposed Amendment to Monograph
Important: Read warnings before using.	• Important: Read warnings before use. • adults and children 2 years and over:
	Inspect • check each household member with a magnifying glass in bright light for lice/nits • look for tiny nits near scalp, beginning at back of neck behind ears • examine small sections of hair at a time • unlike dandruff which moves when touched, nits stick to the hair • if either lice or nits (eggs) are found, treat with this product
Apply to affected area until all the hair is thoroughly wet with product.	Treat • apply thoroughly to hair or other affected area. For head lice, first apply behind ears and to back of neck.
Allow product to remain on area for 10 minutes but no longer.	• allow product to remain for 10 minutes, but no longer
Add sufficient warm water to form a lather and shampoo as usual. Rinse thoroughly.	• use warm water to form a lather, shampoo, then thoroughly rinse[3]
Wash area thoroughly with warm water and soap or shampoo.	• wash area thoroughly with warm water and soap or shampoo[4] • for head lice, towel dry hair and comb out tangles[5]
A fine-toothed comb or a special lice/nit removing comb may be used to help remove dead lice or their eggs (nits) from hair.	Remove lice and their eggs (nits) • use a fine-tooth or special lice/nit comb. Remove any remaining nits by hand (using a throw-away glove). • hair should remain slightly damp while removing nits • if hair dries during combing, dampen slightly with water • for head lice, part hair into sections. Do one section at a time starting on top of head. Longer hair may take 1 to 2 hours. • lift a 1 to 2 inch wide strand of hair. Place comb as close to scalp as possible and comb with a firm, even motion away from scalp. • pin back each strand of hair after combing • clean comb often. Wipe nits away with tissue and discard in a plastic bag. Seal bag and discard to prevent lice from coming back. • after combing, thoroughly recheck for lice/nits. Repeat combing if necessary. • check daily for any lice/nits that you missed
A second treatment must be done in 7 to 10 days to kill any newly hatched lice.	• a second treatment must be done in 7 to 10 days to kill any newly hatched lice • if infestation continues, see a doctor for other treatments • children under 2 years: ask a doctor.

[3] For shampoo products only.
[4] For nonshampoo products only.
[5] For shampoo and nonshampoo products.

Current § 358.650(e) describes ''other required statements'' for these products. The agency is proposing that those statements now appear under the heading ''Other information,'' in accord with § 201.66(c)(7), and that this information may appear in a package insert. If a package insert is used, the ''Other information'' section shall include a statement referring to the package insert for additional information. The agency is retaining the current section titles ''Head lice,'' ''Pubic (crab) lice,'' and ''Body lice'' but requiring that they appear in bold type. The agency is restating the text using the bullet format. In the ''Head lice'' section, the agency is changing from 2 to 4 weeks the time for dry-cleaning or sealing in a plastic bag items that cannot be washed. The expanded time is being proposed for greater assurance of preventing reinfestation of the same items. In the same section, the agency is adding the statement ''[bullet] vacuum all carpets, mattresses, upholstered furniture, and car seats that may have been used by affected people''.

III. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. In accordance with the Executive order, FDA has analyzed the potential economic effects of this proposed rule. FDA has determined, as discussed below, that the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this proposed rule is to revise and improve the statement of identity, warnings, directions, and other required labeling statements for OTC pediculicide drug products. The revised labeling provides more detailed information on the proper use of the product and should improve consumers' self-use.

The proposed rule would require relabeling of OTC pediculicide drug products containing pyrethrum extract with piperonyl butoxide. The agency's drug listing system identifies about 23 manufacturers and 36 marketers of approximately 75 stockkeeping units (SKU) (individual products, packages, and sizes) of OTC pediculicide drug products. There may be a few additional marketers and products that are not identified in the sources FDA reviewed.

The agency does not believe that manufacturers would need to increase the package size to add the additional labeling information. Almost all of these products are marketed in an outer carton and should have adequate space for the additional information. Assuming that there are about 75 affected OTC SKUs in the marketplace, FDA estimates (based on information provided by OTC drug manufacturers) that the rule would impose total one-time compliance costs on industry for relabeling of about $3,000 to $4,000 per SKU, for a total cost of $225,000 to $300,000.

The agency believes the actual cost could be lower for several reasons. First, most of the labeling changes will be made by private label small manufacturers that tend to use simpler and less expensive labeling.

Second, the compliance dates for labeling OTC pediculicide drug products in the new standardized format required by § 201.66 are May 16, 2002, and May 16, 2003 (if annual sales of the product are less than $25,000). (See the **Federal Register** of June 20, 2000 (65 FR 38191 at 38193).) This proposal alerts manufacturers of these products that additional labeling revisions will be required in the future. Thus, manufacturers should be able to control the amount of labeling in inventory. In addition, the agency is proposing that any final rule that may issue based on this proposal become effective 18 months after its publication (with a compliance date of 24 months after publication for products with annual sales less than $25,000). Thus, manufacturers should have ample time to use up the first batch of new labeling that complies with § 201.66, and the labeling changes that result from this proposed rule may be done in the normal course of business.

The final rule will not require any new reporting and recordkeeping activities. Therefore, no additional professional skills are needed. Further, manufacturers will not incur any expenses determining how to state the product's labeling because the proposed amendment (and eventual final rule) provide that information.

The agency considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this labeling, as proposed, in place as soon as possible, the agency also acknowledges that labeling for these products needs to be converted to the new OTC ''Drug Facts'' format by May 16, 2002 (May 16, 2003, for products with annual sales less than $25,000). A final rule based on this proposal will not issue before May 16, 2002, and the agency cannot currently predict exactly when a final rule would issue. The agency believes that 18 months is a reasonable period of time for manufacturers to use up new labeling that is printed to comply with the May 16, 2002, date. The agency rejects an exemption for small entities because the new labeling information is also needed by consumers who purchase products marketed by those entities. However, a longer compliance date (24 months) is being provided for products with annual sales less than $25,000.

OTC pediculicide drug products are not the sole products produced by manufacturers affected by this rule. The agency believes the incremental costs of this proposed rule will be less than 1 percent of any of the manufacturer's total sales. Therefore, the agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) Rather, the proposed statement of identity, warnings, directions, and other information are a ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

V. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

VII. Request for Comments

Interested persons may submit written or electronic comments regarding this proposal to the Dockets Management Branch (address above) by August 8, 2002. Written comments on the agency's economic impact determination may be submitted on or before August 8, 2002. Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief.

Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Proposed Effective Date

The agency is proposing that any final rule that may issue based on this proposal become effective 18 months after its date of publication in the **Federal Register**. The agency is proposing that the compliance date for products with annual sales less than $25,000 would be 24 months after the date of publication in the **Federal Register**. The compliance date for all other OTC drug products would be 18 months after the date of publication in the **Federal Register**.

IX. References

The following references are on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Elston, D. M., ''What's Eating You? Pediculus Humanus (Head Louse and Body Louse),'' *Cutis*, 63:259–264, 1999.

2. Burkhart, C. G. et al., ''An Assessment of Topical and Oral Prescription and Over-The-Counter Treatments for Head Lice,'' *Journal of the American Academy of Dermatology*, 38:979–982, 1998.

3. Sokoloff, F., ''Identification and Management of Pediculosis,'' *Nurse Practitioner*, 19:62–64, 1994.

4. Clore, E. R., ''Pediculosis Screening and Treatment,'' *School Nurse*, 6:14–23, 1990.

5. Shaw, K., ''Eradicating Head Lice: A Review for Pharmacists,'' *Pharmacy Times*, 64:48–50, 1998.

6. Bainbridge, C. V. et al., ''Comparative Study of the Clinical Effectiveness of a Pyrethrin-Based Pediculicide with Combing Versus a Permethrin-Based Pediculicide with Combing,'' *Clinical Pediatrics*, 37:17–22, 1998.

List of Subjects in 21 CFR Part 358

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 358 be amended as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 358 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 358.650 is revised to read as follows:

§ 358.650 Labeling of pediculicide drug products.

(a) *Statement of identity*. The labeling of the product contains the established name of the drug, if any, and identifies the product as a ''lice treatment.''

(b) *Indications*. The labeling of the product states, under the heading ''Uses,'' the following: ''treats head, pubic (crab), and body lice.'' Other truthful and nonmisleading statements, describing only the uses that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) *Warnings*. The labeling of the product contains the following warnings under the heading ''Warnings'':

(1) ''For external use only'' in accord with § 201.66 (c)(5)(i) of this chapter.

(2) ''Do not use [bullet][1] near eyes [bullet] inside nose, mouth, or vagina [bullet] on lice in eyebrows or eyelashes. See a doctor.''

(3) ''Ask a doctor before use if you are [bullet] allergic to ragweed. May cause breathing difficulty or an asthmatic attack.''

(4) ''When using this product [bullet] keep eyes tightlyclosed and protect eyes with a washcloth or towel [bullet] if product gets in eyes, flush with water right away [bullet] scalp itching or redness may occur''.

(5) ''Stop use and ask a doctor if [bullet] breathing difficulty occurs [bullet] eye irritation occurs [bullet] skin or scalp irritation continues or infection occurs''.

(d) *Directions*. The labeling of the product contains the following information under the heading ''Directions'':

(1) The labeling states ''[bullet] Important: Read warnings before use'' [statement shall appear first and in bold type].

(2) The labeling states ''adults and children 2 years and over:'' [in bold type].

(3) For head lice treatment products ''Inspect [in bold type] [bullet] check each household member with a magnifying glass in bright light for lice/nits (eggs) [bullet] look for tiny nits near scalp, beginning at back of neck and behind ears [bullet] examine small sections of hair at a time [bullet] unlike dandruff which moves when touched, nits stick to the hair [bullet] if either lice or nits are found, treat with this product''.

(4) Select one of the following:

(i) *For shampoo products* ''Treat [in bold type] [bullet] apply thoroughly to hair or other affected area. For head lice, first apply behind ears and to back of neck. [bullet] allow product to remain for 10 minutes, but no longer [bullet] use warm water to form a lather, shampoo, then thoroughly rinse [bullet] for head lice, towel dry hair and comb out tangles''.

(ii) *For nonshampoo products* ''Treat [in bold type] [bullet] apply thoroughly to hair or other affected area. For head lice, first apply behind ears and to back of neck. [bullet] allow product to remain for 10 minutes, but no longer [bullet] wash area thoroughly with warm water and soap or shampoo [bullet] for head lice, towel dry hair and comb out tangles''.

(5) ''Remove lice and their eggs (nits) [in bold type] [bullet] use a fine-tooth or special lice/nit comb. Remove any remaining nits by hand (using a throw-away glove). [bullet] hair should remain slightly damp while removing nits [bullet] if hair dries during combing, dampen slightly with water [bullet] for head lice, part hair into sections. Do one section at a time starting on top of head. Longer hair may take 1 to 2 hours. [bullet] lift a 1 to 2 inch wide strand of hair. Place comb as close to scalp as possible and comb with a firm, even motion away from scalp. [bullet] pin back each strand of hair after combing [bullet] clean comb often. Wipe nits away with tissue and discard in a plastic bag. Seal bag and discard to prevent lice from coming back. [bullet] after combing, thoroughly recheck for lice/nits. Repeat combing if necessary. [bullet] check daily for any lice/nits that you missed''.

(6) The labeling states ''[bullet] a second treatment must be done in 7 to 10 days to kill any newly hatched lice''.

(7) The labeling states ''[bullet] if infestation continues, see a doctor for other treatments''.

(8) The labeling states ''children under 2 years:'' [in bold type] ''ask a doctor''.

(e) The labeling of the product contains the following statements, as appropriate, under the heading ''Other information.'' This information may appear in a package insert. If a package insert is used, the ''Other information'' section shall include a statement referring to the package insert for additional information.

(1) ''Head lice [highlighted in bold type] [bullet] lay small white eggs (nits) on hair shaft close to scalp [bullet] nits are most easily found on back of neck or behind ears [bullet] disinfect hats, hair ribbons, scarves, coats, towels, and

[1] See § 201.66(b)(4) of this chapter for definition of bullet symbol.

bed linens by machine washing in hot water (above 54 °C (130 °F)), then using hottest dryer cycle for at least 20 minutes [bullet] items that cannot be washed (bedspreads, blankets, pillows, stuffed toys, etc.) should be dry-cleaned or sealed in a plastic bag for 4 weeks, then removed outdoors and shaken out very hard before using again [bullet] items that cannot be washed, dry-cleaned, or stored may be sprayed with a product designed for this purpose [bullet] soak all combs and brushes in hot water (above 54 °C (130 °F)) for at least 10 minutes [bullet] vacuum all carpets, mattresses, upholstered furniture, and car seats that may have been used by affected people''.

(2) ''Pubic (crab) lice [highlighted in bold type] [bullet] may be transmitted by sexual contact. Sexual partners should be treated simultaneously to avoid reinfestation [bullet] lice are very small and look like brown or grey dots on skin [bullet] usually cause intense itching and lay small white eggs (nits) on the hair shaft generally close to the skin surface [bullet] may be present on the short hairs of groin, thighs, trunk, and underarms, and occasionally on the beard and mustache [bullet] disinfect underwear by machine washing in hot water (above 54 °C (130 °F)), then using hottest dryer cycle for at least 20 minutes''.

(3) ''Body lice [highlighted in bold type] [bullet] body lice and their eggs (nits) are generally found in the seams of clothing particularly in waistline and armpit area [bullet] body lice feed on skin then return to clothing to lay their eggs [bullet] disinfect clothing by machine washing in hot water (above 54 °C (130 °F)), then using hottest dryer cycle for at least 20 minutes [bullet] do not seal clothing in a plastic bag because nits can remain dormant for up to 30 days''.

Dated: April 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11656 Filed 5–9–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–02–017]

RIN–2115–AE47

Drawbridge Operation Regulations; Saginaw River, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the operating regulation governing drawbridges over Saginaw River in Bay City, Michigan. The proposed rule would update current owners of railroad bridges, add a bridge that has been constructed, remove a bridge that has been demolished, and assign standardized mile marker designations. The revision was requested by the Michigan Department of Transportation and the city of Bay City, Michigan, to update the regulation for bridges on Saginaw River.

DATES: Comments must be received on or before July 9, 2002.

ADDRESSES: You may mail comments and related material to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Room 2019, Cleveland, OH, 44199–2060. Ninth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket (CGD09–02–017) and are available for inspection or copying at the address above between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Ninth Coast Guard District Bridge Branch, at (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments for or against this rule. Persons submitting comments should include names and addresses, identify the rulemaking (CGD09–02–017) and the specific section of this proposed rule to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Public Meeting

The Coast Guard plans no public hearing. Individuals may request a public hearing by writing to the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, we will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The current bridge operating regulations for drawbridges over Saginaw River are found in 33 CFR § 117.647. The city of Bay City operates all highway drawbridges on Saginaw River, including the Veterans Memorial bridge and Lafayette Street bridge, miles 5.6 and 6.78, respectively, which are owned by the Michigan Department of Transportation (MDOT). The current regulation does not contain an operating schedule for the Liberty Street bridge, which was constructed in 1987. The former Sixth Avenue bridge at mile 17.1 was removed in 1985.

In addition to the proposed changes for the highway bridges, the railroad bridges listed at miles 2.5 and 4.4, respectively, have changed ownership and would be updated through this rulemaking.

The mile marker designations for the bridges listed in this rulemaking will be revised to reflect the mile markers used in the United States Coast Pilot for proper cross-reference.

Discussion of Proposed Rule

The city of Bay City, Michigan has asked the Coast Guard to update § 117.647 by adding an operating schedule for Liberty Street bridge, which is located between Independence bridge and Veterans Memorial bridge. The current regulation has established bridge openings from March 16 to December 15 each year, between the hours of 8 a.m. and 8 p.m. on Saturdays, Sundays, and Federal holidays, to provide a continuous flow of vessels between Independence and Lafayette Street bridges during the busiest periods of vessel traffic on the river. All four highway bridges open twice an hour for pleasure vessels between 8 a.m. and 8 p.m. Two of the four bridges open on the hour and half-hour, while the other two bridges open on the quarter hour and three-quarter hour. This schedule is designed to have each bridge open in succession as vessels pass through. With the addition of Liberty Street bridge, this proposed rule would correctly place the bridges in proper order. The Veterans Memorial and Lafayette Street bridges will be adjusted to place them in the proper order for successive passage.

The Sixth Street bridge will be removed from the regulation because the bridge no longer exists. The names of the former Detroit and Mackinac and Conrail railroad bridges, miles 2.5 and

4.4, respectively, will be updated to reflect the current owners.

In addition, the mile markers for all listed bridges will be corrected to match the mile marker listings in the U.S. Coast Pilot to eliminate confusion and provide proper cross-references.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the relatively minor adjustments to the current regulation. There are no additional limitations placed on navigation, and the proper sequencing of bridge openings is expected to improve service to navigation and vehicular traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this proposed rule will have a significant impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

The proposed schedule is not expected to place any additional limitations on passing vessel traffic. No identified entities would be unable to pass the bridges, as needed. Therefore, the Coast Guard certifies under 5 U.S.C 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Ninth Coast Guard District, at the address above.

Collection of Information

This proposed rule would call for no new collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3520).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 13132, and determined that this proposed rule does not have federalism implications under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibility between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information andRegulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.647, revise paragraph (a), and paragraphs (b), introductory text, (b)(3), and (b)(4); remove paragraph (c);

and redesignate paragraphs (d) and (e) as paragraphs (c) and (d), to read as follows:

§ 117.647 Saginaw River.

(a) The draws of the Lake State Railways railroad bridge, mile 3.10 at Bay City, and the Central Michigan railroad bridge, mile 4.94 at Bay City, shall open on signal; except that, from December 16 through March 15, the draws shall open on signal if at least 12 hours advance notice is provided.

(b) The draws of the Independence bridge, mile 3.88, Liberty Street bridge, mile 4.99, Veterans Memorial bridge, mile 5.60, and Lafayette Street bridge, mile 6.78, all in Bay City, shall open on signal from March 16 through December 15, except as follows:

(1) * * *

(3) From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draws of the Independence and Veterans Memorial bridges need not be opened for the passage of pleasure craft except from three minutes before to three minutes after the hour and half-hour.

(4) From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draws of the Liberty Street and Lafayette Street bridges need not be opened for the passage of pleasure craft, except from three minutes before to three minutes after the quarter hour and three-quarter hour.

* * * * *

Dated: April 29, 2002.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 02–11718 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–009]

RIN 2115–AA97

Safety Zones; Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish safety zones for annual fireworks displays located in the Captain of the Port Buffalo Zone. This action is necessary to provide for the safety of life and property on navigable waters during each event. This action is intended to restrict vessel traffic in a portion of the Captain of the Port Buffalo Zone.

DATES: Comments must be received on or before June 10, 2002.

ADDRESSES: Comments may be mailed or delivered to: Commanding Officer, U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203. Marine Safety Office Buffalo maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Buffalo between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander David Flaherty at (716) 843–9574.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number on this rulemaking (CGD09–02–009), indicate the specific section of this proposal to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for photocopying and electronic filing. If you would like to know they reached us, please enclose a stamped, self-addressed envelope or postcard.

The Coast Guard will consider all comments received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may request a public meeting by writing to MSO Buffalo at the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish 14 permanent safety zones that will be activated for marine events occurring annually at the same location. The 14 proposed locations are: (1) The waters of the Niagara River within 300-yards of a fireworks barge moored/anchored with its center in approximate position 43°01′52″ N, 078°53′16″ W; (2) all navigable waters of Sodus Bay Channel between a line drawn from buoy R4 to buoy G5 and the West Pier; (3) all waters of the Black Rock Canal between a line drawn bulkhead to bulkhead at Buoy #5 extended to a line drawn bulkhead to bulkhead at Buoy # 12 and the Black Rock Canal Entrance Channel within 1000-feet of the fireworks display located at position 42°52′39″ N, 078°53′42″ W; (4) the waters of the Niagara River and Lake Erie between Fort Erie, Ontario, Canada and Buffalo, NY; (5) all waters of Rochester Harbor and the Genesee River encompassed by an area 300-yards around the fireworks barge moored/anchored in approximate position: 43°15.8' N, 077°36.0' W; (6) the waters of the Niagara River within 300-yards of the fireworks barged moored/anchored with its center in approximate position 43°01′06″ N, 078°53′13″ W; (7) the navigable waters of the Niagara River between Grand Island and Tonawanda, NY; (8) all waters of Oswego Harbor in Lake Ontario within 300-yards of a fireworks barge moored/anchored in approximate position 43°28′25″ N, 076°31′01″ W; (9) all waters of Oswego Harbor within an 800-foot radius around the fireworks barge located at 43°28′ N, 076°31′9″ W; (10) all waters of Oswego Harbor within a line from West Pierhead Light at 43°28′25″ N, 076°31′ W to the East Pierhead light at 43°28′22″ N, 076°30′51″ W, then along a line extending southeast to 43°28′08″ N, 076°30′57″ W, west along the shore to 43°27′57″ N, 076°30′45″ W, then along a line west to Oswego Harbor Buoy #2, and then following a line back to the West Pierhead Light; (11) all navigable waters of Presque Isle Bay within an 800-foot arc around the fireworks launch platform located at the end of Dobbins Landing in approximate position 42°08′19″ N, 080°05′30″ W; (12) all waters of Lake Ontario within Port Bay 500-feet around a barge located at approximate position 42°17′46″ N, 076°50′02″ W; (13) St. Lawrence River within Wheathouse Bay, St. Lawrence River; (14) a 300-yd radius around Heart Island. All coordinates are based upon the North American Datum of 1983 (NAD 83).

Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard associated with these events, the Captain of the Port has determined that fireworks launches in close proximity to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of inexperienced recreational boaters, congested waterways, darkness

punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement in the vicinity of these marine event locations would help ensure the safety of persons and property at these events and help minimize the associated risk.

Establishing permanent safety zones by notice and comment rulemaking would give the public the opportunity to comment on the proposed zones, provide better notice than promulgating temporary rules annually, and decrease the amount of annual paperwork required for these events. The Coast Guard has not previously received notice of any impact caused by these events.

Discussion of Proposed Rule

The size of these proposed safety zones was determined using National Fire Protection Association and local area fire department standards, combined with the Coast Guard's knowledge of waterway conditions in these areas.

The Coast Guard believes that these proposed rules would not pose any new problems for commercial vessels transiting the area. In the unlikely event that shipping would be affected by these new regulations, commercial vessels would be able to request permission from the Captain of the Port Buffalo to transit through the safety zone. No commercial shipping lanes would be impacted as a result of this rulemaking.

The Coast Guard will announce the exact times and dates for these events by publishing a Notice of Implementation in the **Federal Register** as well as in the Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and, for those who request it from Marine Safety Office Buffalo, by facsimile (fax).

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels would be restricted from the zones. Further, all of the zones are in areas where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zones would only be in effect for a few hours on the day of the event on an annual basis. Vessel traffic could safely pass outside the proposed safety zones during the events. In cases where traffic congestion would be greater than expected and blocks shipping channels, traffic may be allowed to pass through the safety zone under Coast Guard escort with the permission of the Captain of the Port Buffalo. Before the proposed effective period, the Coast Guard would issue maritime advisories widely available to users who might be in the affected area by publication in the **Federal Register** and the Ninth Coast Guard District Local Notice to Mariners Marine information broadcasts and facsimile broadcasts may also be made. Additionally, the Coast Guard has not received any negative reports from small entities affected during these displays in previous years.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects and participate in the rulemaking process. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (*see* **ADDRESSES.**)

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to

safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.914 to read as follows:

§ 165.914 Safety Zones; Annual fireworks events in the Captain of the Port Buffalo Zone.

(a) *Safety zones.* The following areas are designated safety zones:

(1) *Canal Fest, Tonawanda, NY.*

(i) *Location.* All waters of the Niagara River within 300-yards of a fireworks barge moored/anchored with its center in approximate position 43°01′52″ N, 078°53′16″ W (NAD 1983).

(ii) *Expected date.* One day in mid July.

(2) *Carnival on the Bay, Sodus Point, NY.*

(i) *Location.* All navigable waters of Sodus Bay Channel between a line drawn from buoy R4 to buoy G5 and the West Pier.

(ii) *Expected date.* One day in the last week of June.

(3) *Friendship Festival, Buffalo, NY.*

(i) *Location.* All waters of Lake Erie, the Black Rock Canal between a line drawn bulkhead to bulkhead at Buoy #5 extended to a line drawn bulkhead to bulkhead at Buoy #12 and the Black Rock Canal Entrance Channel within 1000-feet of the fireworks display located at position 42°52′39″ N 078°53′42″ W (NAD 1983).

(ii) *Expected date.* One day in the first week of July.

(4) *Friendship Festival Air Show, Buffalo, NY.*

(i) *Location.* The waters the Niagara River and Lake Erie between Fort Erie, Ontario, Canada and Buffalo, NY.

(ii) *Expected date.* One day in the first week of July.

(5) *Rochester Harbor Fest, Rochester, NY.*

(i) *Location.* All waters of Rochester Harbor and the Genesee River encompassed by an area 300-yards around the fireworks barge moored/anchored in approximate position: 43°15.8′ N 077°36.0′ W (NAD 1983).

(ii) *Expected date.* One day in early August.

(6) *Tonawanda/North Tonawanda Fireworks Display.*

(i) *Location.* The waters of the Niagara River within 300-yards of the fireworks barged moored/anchored with its center in approximate position 43°01′06″ N, 078°53′13″ W (NAD 1983).

(ii) *Expected date.* One day in the first week of July.

(7) *Hydromania Power Boat Races, Tonawanda, NY.*

(i) *Location.* All the navigable waters of the Niagara River between Grand Island and Tonawanda, NY.

(ii) *Expected date.* Two days in late June.

(8) *Oswego Independence Day Fireworks, Oswego, NY.*

(i) *Location.* All waters of Oswego Harbor, in Lake Ontario, within 300-yards of a fireworks barge moored/anchored in approximate position 43°28′25″ N, 076°31′01″ W (NAD 1983).

(ii) *Expected date.* One day in the first week of July.

(9) *Oswego Harborfest Fireworks Display, Oswego, NY.*

(i) *Location.* All waters of Oswego Harbor within an 800-foot radius around the fireworks barge located at 43°28′0″ N, 076°31′9″ W (NAD 1983).

(ii) *Expected date.* One day in the last week of July.

(10) *Oswego Harborfest Tall Ship Battle Demo, Oswego, NY.*

(i) *Location.* All waters of Oswego Harbor within a line from West Pierhead Light at 43°28′25″ N, 076°31′ W to East Pierhead light at 43°28′22″ N, 076°30′51″ W, then along a line extending southeast to 43°28′08″ N, 076°30′57″, west along the shore to 43°27′57″ N, 076°30′45″ W, then following a line west to Oswego Harbor Buoy #2, and along a line back to the West Pierhead Light (NAD 1983).

(ii) *Expected date.* One day in the last week of July.

(11) *We Love Erie Days Fireworks Display, Erie, PA.*

(i) *Location.* all navigable waters of Presque Isle Bay within an 800-foot arc around the fireworks launch platform located at the end of Dobbins Landing in approximate position 42°08′19″ N, 080°05′30″ W (NAD 1983).

(ii) *Expected date.* One day in mid August.

(12) *Thom Graves Memorial Fireworks Display, Wolcott, NY.*

(i) *Location.* All waters of Lake Ontario within Port Bay, 500 feet around a barge located at approximate position 42°17′46″ N, 076°50′02″ W. (NAD 1983).

(ii) *Expected date.* One day in the first week of July.

(13) *Thunder on Wheathouse Bay Power Boat Races, Ogdensburg, NY.*

(i) *Location.* All waters of St. Lawrence River within Wheathouse Bay.

(ii) *Expected date.* Three days in mid June.

(14) *Fireworks Over Boldt Castle, Alexandria Bay, NY.*

(i) *Location.* All waters of the St. Lawrence River within a 300-yard radius of the fireworks display on Heart Island.

(ii) *Expected date.* One day in the first week of July.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the

Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) The safety zones in this regulation are outside navigation channels and will not adversely affect shipping. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Buffalo to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Buffalo on Channel 16, VHF–FM.

(c) *Effective period.* The Captain of the Port Buffalo will publish at least 10 days in advance a Notice of Implementation in the **Federal Register** as well as in the Ninth Coast Guard District Local Notice to Mariners the dates and times this section is in effect.

Dated: April 22, 2002.

S.D. Hardy,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 02–11660 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Corpus Christi–02–003]

RIN 2115–AA97

Security Zones: Port of Port Lavaca-Point Comfort, Point Comfort, TX; Port of Corpus Christi Inner Harbor, Corpus Christi, TX; and Port of Brownsville, Brownsville, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent security zones to ensure the safety and security within Port of Port Lavaca-Point Comfort, Port of Corpus Christi, and Port of Brownsville. These security zones are needed to protect personnel, vessels, waterfront facilities, and national security interests in these ports from subversive actions by any group or groups of individuals whose objective is to destroy or disrupt maritime activities. Entry of recreational vessels, passenger vessels, or commercial fishing vessels into these zones would be prohibited unless specifically authorized by the Captain of the Port Corpus Christi or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before June 10, 2002.

ADDRESSES: You may mail comments and related material to the U.S. Coast Guard Marine Safety Office Corpus Christi, 555 N. Carancahua Street, Suite 500, Corpus Christi, Texas, 78478. Marine Safety Office Corpus Christi maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Corpus Christi between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) T. J. Hopkins, Waterways Management Division, U.S. Coast Guard Marine Safety Office Corpus Christi, Texas, at (361) 888–3162.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Corpus Christi–02–003), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Corpus Christi at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated. In response to these terrorist acts and warnings, heightened awareness and security of our ports and harbors is necessary. The Captain of the Port, Corpus Christi is proposing to establish permanent security zones within the Port of Port Lavaca-Point Comfort, Port of Corpus Christi, and the Port of Brownsville.

Restricting the access of recreational, passenger, and commercial fishing vessels reduces potential methods of attack on personnel, vessels and waterfront facilities within these zones. These security zones are designed to limit the access of vessels that do not have business to conduct with facilities or structures within these industrial areas. Entry of recreational vessels, passenger vessels, and commercial fishing vessels into these zones would be prohibited unless specifically authorized by the Captain of the Port Corpus Christi or his designated representative.

A temporary final rule was published March 18, 2002 in the **Federal Register** (67 FR 11920) creating a security zone within the Corpus Christi Inner Harbor. The temporary rule restricts access of recreational, passenger, and commercial fishing vessels to the Inner Harbor. The proposed rule would make the Inner Harbor security zone permanent and would establish similar zones in the Port of Port Lavaca-Point Comfort and Port of Brownsville.

Discussion of Proposed Rule

Port Lavaca-Point Comfort is a heavily industrialized area with general cargo facilities, a liquid cargo ship terminal, and a liquid cargo barge terminal. Highways, rail service, and waterways combine to provide shippers with intermodal transportation options at these ports. Liquid cargoes include highly volatile materials such as anhydrous ammonia and butadiene. These materials, if released due to a terrorist attack, could cause wide spread harm and pollution to the surrounding cities of Port Lavaca, Point Comfort, Port O'Connor and Victoria. The Port of Port Lavaca-Point Comfort is located on the east side of Lavaca Bay and is accessible via the Matagorda Ship Channel. The channel has a controlling depth of 38 feet.

The Port of Corpus Christi is the fourth largest petro-chemical port within the United States. A large number of petro-chemical waterfront facilities are located within the Inner Harbor. The Inner Harbor serves as a major industrial ship channel. The Port

of Corpus Christi is also designated as an alternate military strategic load-out port with docks and facilities located within the Inner Harbor. These docks and facilities are vital to the national security interest of the United States. The Inner Harbor is accessible via the Corpus Christi Channel and has a controlling depth of 45 feet.

The Port of Brownsville is a developing industrial port that is becoming more important with the influence of the North American Free Trade Agreement (NAFTA). The Port of Brownsville has marine terminal operations covering both liquid and dry cargo handling. In addition, containerized cargo transportation is anticipated to increase within the port. Principal imports and exports include chemicals, clays, petroleum, grain, agricultural products, sulfur, steel, bulk minerals, ores, fertilizers and aluminum. The Port of Brownsville is accessible via the Brownsville Ship Channel and has a controlling depth of 42 feet.

The proposed rule would create security zones within the industrialized areas of these ports that would exclude recreational, passenger, and commercial fishing vessels from entering these areas. Many large commercial vessels and barges, primarily containing extremely flammable and hazardous materials, transit the industrial areas of these ports. This proposed rule would increase the level of security within the ports by reducing the number of vessels transiting the industrialized area and limiting access to only those vessels that are conducting business with port industries. All recreational, passenger, and commercial fishing vessels would be prohibited from entering the security zones without the permission of the Captain of the Port Corpus Christi or his designated representative.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rule will not affect commercial traffic conducting business within the ports. Within these areas there are no marinas or other public businesses or docks that service recreational, passenger or commercial fishing vessels. As a result there would be little or no economic impact on recreational, passenger, and commercial fishing vessels or servicing entities. Vessels affected by this proposed rule may be permitted to enter the security zones on a case by case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because recreational vessels, passenger vessels, and commercial fishing vessels do not normally conduct business within these industrialized areas. Should a recreational vessel, passenger vessel, or commercial fishing vessel need to enter one of these security zones to conduct business with a small entity, there is no cost and little burden associated with obtaining permission to enter from the Captain of the Port Corpus Christi via VHF Channel 16 or via telephone at (361) 888–3162.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the address under **ADDRESSES** explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG T.J. Hopkins, Waterways Management, U.S. Coast Guard Marine Safety Office Corpus Christi at (361) 888–3162.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effect

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.809 to read as follows:

§ 165.809 Security Zones: Port of Port Lavaca-Point Comfort, Point Comfort, Texas; Port of Corpus Christi Inner Harbor, Corpus Christi, Texas; and Port of Brownsville, Brownsville, Texas.

(a) *Location.* The following areas are designated as security zones:

(1) *Port of Port Lavaca-Point Comfort*—all waters between the Dredge Island Bridge at 28°39′30″ N, 96°34′20″ W and a line drawn between points 28°38′10″ N, 96°33′15″ W and 28°38′10″ N, 96°34′45″ W including the Point Comfort turning basin and the adjacent Alcoa Channel. These coordinates are based upon NAD 1983.

(2) *Port of Corpus Christi Inner Harbor*—all waters of the Christi Inner Harbor from the Inner Harbor Bridge (US HWY 181) to, and including, the Viola Turning Basin.

(3) *Port of Brownsville Navigation District*—all waters of the Brownsville Ship Channel, from west of the entrance to the Brownsville Fishing Harbor to, and including, the Brownsville Turning Basin.

(b) *Regulations.* (1) No recreational vessels, passenger vessels, or commercial fishing vessels may enter these security zones unless specifically authorized by the Captain of the Port Corpus Christi or his designated representative.

(2) Recreational vessels, passenger vessels and commercial fishing vessels requiring entry into these security zones must contact the Captain of the Port Corpus Christi or his designated representative. The Captain of the Port may be contacted via VHF Channel 16 or via telephone at (361) 888–3162 to seek permission to enter the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Corpus Christi or his designated representative.

(3) Designated U.S. Coast Guard personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority of this section includes 33 U.S.C. 1226.

Dated: April 22, 2002.

William J. Wagner III,

Captain, U.S. Coast Guard, Captain of the Port Corpus Christi.

[FR Doc. 02–11719 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV 060–6019b; FRL–7208–3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Nitrogen Oxides Budget Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing a nitrogen oxides (NO_X) allowance trading program for large electric generating and industrial units, beginning in 2004, as well as requirements for reductions in NO_X emissions from cement manufacturing kilns. In the Final Rules section of this **Federal Register**, EPA is approving West Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by June 10, 2002.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and

West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, S.E., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, at the EPA Region III address above, or by e-mail at fernandez.cristina@epa.gov. Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On May 1, 2002, the Department of Environmental Protection submitted a revision to its SIP to address the requirements of the NO_X SIP Call Phase I. The revision consists of the adoption of Rule 45CSR26—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units and Rule 45CSR1—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides. For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 1, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–11723 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–992, MB Docket No. 02–96, RM–10410]

Digital Television Broadcast Service; Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Amarillo Junior College District, licensee of noncommercial station KACV-TV, NTSC channel *2+, Amarillo, Texas, proposing the substitution of DTV channel *8 for station KACV–TV's assigned DTV channel *21. DTV Channel *8 can be allotted to at reference coordinates (35–2–30 N. and 101–52–56 W.) with a power of 5, a height above average terrain HAAT of 519 meters.

DATES: Comments must be filed on or before June 27, 2002, and reply comments on or before July 15, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners.Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Wayne Coy, Jr., Cohn and Marks LLP, 1920 N Street, NW., Suite 300, Washington, DC 20036–1622 (Counsel for Amarillo Junior College District).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–96, adopted April 29, 2002, and released May 6, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas is amended by removing DTV channel *21 and adding DTV channel *8 at Amarillo.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11671 Filed 5–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–981, MB Docket No. 02–94, RM–10423]

Digital Television Broadcast Service; Athens, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Georgia Public Telecommunications Commission, licensee of noncommercial station WGTV–TV, proposing the substitution of DTV channel *12 for station WGTV–TV's assigned DTV channel *22. DTV Channel *12 can be allotted to Athens, Georgia, at reference coordinates 33–48–18 N. and 84–08–40

W. with a power of 16, a height above average terrain HAAT of 305 meters.

DATES: Comments must be filed on or before June 24, 2002, and reply comments on or before July 10, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald T. Stepka, Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004–1206 (Counsel for Georgia Public Telecommunications Commission).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–94, adopted April 26, 2002, and released May 3, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Georgia is amended by removing DTV channel *22 and adding DTV channel *12 at Athens.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11672 Filed 5–9–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI33

Migratory Bird Hunting; Approval of Tungsten-Iron-Nickel-Tin Shot as Nontoxic for Hunting Waterfowl and Coots

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to approve shot formulated with tungsten, iron, nickel, and tin as nontoxic for hunting waterfowl and coots. We assessed possible effects of the tungsten-iron-nickel-tin (TINT) shot, and we believe that it does not present a significant toxicity threat to wildlife or their habitats and that further testing of TINT shot is not necessary. In addition, approval of TINT shot may induce more waterfowl hunters to change from the illegal use of lead shot, reducing lead risks to species and habitats.

DATES: Comments on the proposed rule must be received no later than June 10, 2002.

ADDRESSES: You may send comments about this proposal to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203–1610. You may inspect comments during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, or John J. Kreilich, Jr., Division of Migratory Bird Management, 703–358–1714.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

Since the mid-1970s, we have sought to identify shot that is not significantly toxic to migratory birds or other wildlife. Compliance with the use of nontoxic shot has increased over the last few years (Anderson *et al.* 2000), and we believe that it will continue to increase with the approval and availability of other nontoxic shot types. Currently, steel, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, and tungsten-nickel-iron shot are approved as nontoxic.

The purpose of this proposed rule is to approve the use of TINT shot in the tested formulation (65% tungsten, 10.4% iron, 2.8% nickel, and 21.8% tin by weight) for waterfowl and coot hunting. We propose to amend 50 CFR 20.21 (j), which describes prohibited types of shot for waterfowl and coot hunting.

On October 12, 2001, we received an application from ENVIRON-Metal, Inc.

for approval of HEVI–SHOTTM brand of Soft Shot in a 65% tungsten, 10.4% iron, 2.8% nickel, and 21.8% tin formulation. The initial application (Tier 1), included information on chemical characterization, production variability, use volume, toxicological effects, environmental fate and transport, and evaluation. After reviewing the tier 1 application and assessing the possible effects of TINT shot, we believe that it does not pose a significant toxicity threat to wildlife or their habitats.

Toxicity Information

Tungsten may be substituted for molybdenum in enzymes in mammals. Ingested tungsten salts reduce growth and can cause diarrhea, coma, and death in mammals (Bursian *et al.* 1996, Cohen *et al.* 1973, Karantassis 1924, Kinard and Van de Erve 1941, National Research Council 1980, Pham-Huu-Chanh 1965), but elemental tungsten is virtually insoluble and therefore essentially nontoxic. A dietary concentration of 94 parts-per-million (ppm) did not reduce weight gain in growing rats (Wei *et al.* 1987). Lifetime exposure to 5 ppm tungsten as sodium tungstate in drinking water produced no discernible adverse effects in rats (Schroeder and Mitchener 1975). At 100 ppm tungsten as sodium tungstate in drinking water, rats had decreased enzyme activity after 21 days (Cohen *et al.* 1973).

Chickens given a complete diet showed no adverse effects of 250 ppm sodium tungstate administered for 10 days in the diet. However, 500 ppm in the diet had detrimental effects on day-old chicks (Teekell and Watts 1959). Adult hens had reduced egg production and egg weight on a diet containing 1,000 ppm tungsten (Nell *et al.* 1981a). EPT (1999) concluded that 250 ppm in the diet would produce no observable adverse effects. Kelly *et al.* (1998) demonstrated no adverse effects on mallards dosed with tungsten-iron or tungsten-polymer shot according to nontoxic shot test protocols.

Most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten. As we found in our reviews of other tungsten shot types, we have no basis for concern about the toxicity of the tungsten in TINT shot to fish, mammals, or birds.

Nickel is a dietary requirement of mammals, with necessary consumption set at 50 to 80 parts per billion for the rat and chick (Nielsen and Sandstead 1974). Though it is necessary for some enzymes, nickel can compete with calcium, magnesium, and zinc for binding sites on many enzymes. Water-soluble nickel salts are poorly absorbed if ingested by rats (Nieboer *et al.* 1988). Nickel carbonate caused no treatment effects in rats fed 1,000 ppm for 3 to 4 months (Phatak and Patwardhan 1950). Rats fed 1,000 ppm nickel sulfate for 2 years showed reduced body and liver weights, an increase in the number of stillborn pups, and decrease in weanling weights through three generations (Ambrose *et al.* 1976). Nickel chloride was even more toxic; 1,000 ppm fed to young rats caused weight loss in 13 days (Schnegg and Kirchgessner 1976).

Soluble nickel salts are toxic to mammals, with an oral LD_{50} of 136 mg/kg in mice, and 350 mg/kg in rats (Fairchild *et al.* 1977). Nickel catalyst (finely divided nickel in vegetable oil) fed to young rats at 250 ppm for 16 months, however, produced no detrimental effects (Phatak and Patwardhan 1950).

In chicks from hatching to 4 weeks of age, 300 ppm nickel as nickel carbonate or nickel acetate in the diet produced no observed adverse effects. However, concentrations of 500 ppm or more reduced growth (Weber and Reid 1968). A diet containing 200 ppm nickel as nickel sulfate had no observed effects on mallard ducklings from 1 to 90 days of age. Diets of 800 ppm or more caused significant changes in physical condition of the ducklings (Cain and Pafford 1981). Eastin and O'Shea (1981) observed no apparent significant changes in pairs of breeding mallards fed diets containing up to 800 ppm nickel as nickel sulfate for 90 days. We have no basis for concern about the toxicity of nickel in TINT shot to fish, mammals, or birds.

Iron is an essential nutrient, so reported iron toxicosis in mammals, such as livestock, is primarily a phenomenon of overdosing. Maximum recommended dietary levels of iron range from 500 ppm for sheep to 3,000 ppm for pigs (National Research Council [NRC] 1980). Chickens require at least 55 ppm iron in the diet (Morck and Austic 1981). Chickens fed 1,600 ppm iron in an adequate diet displayed no ill effects (McGhee *et al.* 1965), and turkey poults fed 440 ppm in the diet also suffered no ill effects. The tests in which eight #4 tungsten-iron shot were administered to each mallard in a toxicity study indicated that the 45% iron content of the shot had no adverse effects on the test animals (Kelly *et al.* 1998). We have no basis for concern about the toxicity of iron in TINT shot to fish, mammals, or birds.

Elemental and inorganic tins have low toxicity, due largely to low absorption rate, low tissue accumulation, and rapid excretion rates. Inorganic tin is only slightly to moderately toxic to mammals. The oral LD50 values for tin (II) chloride for mice and rats are 250 and 700 mg/kg of body weight, respectively (WHO 1980).

A 150-day chronic toxicity/reproductive study conducted for tin shot revealed no adverse effects in mallards dosed with eight No. 4 sized shot. There were no significant changes in egg production, fertility, or hatchability of birds dosed with tin when compared to steel-dosed birds (Gallagher *et al.* 2000).

Environmental Fate

Elemental tungsten and iron are virtually insoluble in water and do not weather or degrade in the environment. Tungsten is stable in acids and does not easily form compounds with other substances. Preferential uptake by plants in acidic soil suggests uptake of tungsten when it has formed compounds with other substances rather than when it is in its elemental form (Kabata-Pendias and Pendias 1984).

Nickel is common in fresh waters, though usually at concentrations of less than 1 part per billion in locations unaffected by human activities. Pure nickel is not soluble in water. Free nickel may be part of chemical reactions, such as sorption, precipitation, and complexation. Reactions of nickel with anions are unlikely. Complexation with organic agents is poorly understood (U.S. Environmental Protection Agency [EPA] 1980). Water hardness is the dominant factor governing nickel effects on living things (Stokes 1988).

Tin occurs naturally in soils at 2 to 200 mg/g with areas of enrichment at much higher concentrations (up to 1000mg/g) (WHO 1980). However, in the United States, soil concentrations are between 1 and 5 ppm (Kabata-Pendias and Pendias 2001).

Environmental Concentrations

Calculation of the estimated environmental concentration (EEC) of a candidate shot in a terrestrial ecosystem is based on 69,000 shot per hectare (2.47 acre) (Bellrose 1959, 50 CFR 20.134). Assuming complete dissolution of the shot, the EEC for tungsten in soil is 15.09 mg/kg. The EECs for nickel and iron would be 0.65 and 2.41 mg/kg, respectively. The EEC for nickel (the only one of the four elements with an application limit) is substantially below the U.S. Environmental Protection Agency (EPA) biosolid application limit. The 0.65 mg/kg EEC for nickel also is far below the 16 to 35 mg/kg concentrations suggested as minimum sediment concentrations at which effects of the

metal are likely to occur (EPA 1997, Ingersoll *et al.* 1996, Long and Morgan 1991, MacDonald *et al.* 2000, Smith *et al.* 1996). The EEC for tungsten from TINT shot is below that for the already-approved TNI shot. The EEC for iron is less than 0.01% of the typical background concentration, and the iron is in an insoluble form. The EEC for tin in soil is 5.06 mg/kg, one order of magnitude smaller than the 50 mg/kg suggested maximum concentration in surface soil tolerated by plants (Kabata-Pendias and Pendias 2001).

Calculation of the EEC in an aquatic ecosystem assumes complete erosion of 69,000 shot in one hectare (2.47 acre) of water 1 foot deep. The EECs for the elements in TINT shot in water are 3,218 µg/L for tungsten, 515 µg/L for iron, 139 µg/L for nickel, and 1,079 µg/L for tin. We concluded that a tungsten concentration of 10,500 µg/L posed no threat to aquatic life (62 FR 4877). The EEC for nickel from TINT shot is below the EPA acute water quality criterion of 1,400 µg/L in fresh water, but would exceed the 75 µg/L criterion for salt water. However, tests showed that corrosion of TINT shot occurs at very low rates. The amount of nickel liberated into seawater by eight No. 4 TINT shot for a 30-day exposure was 23% of the amount liberated by TNI. TINT shot is predicted to release 1.8 µg/L of nickel into 1 ha-ft of seawater over 1 year. This value is 2.4% of the acute criterion and less than 23% of the chronic criterion.

The EEC for iron is below the chronic criterion for protection of aquatic life and for tin; it is four times less than the Minnesota Water Quality Standard. Previous assessments of tungsten demonstrated dissolution at a rate of 10.5 mg/L (equal to 10,500 µg/L) and concluded no risk to aquatic life (62 FR 4877). The EEC of tungsten from TINT shot is 3,218 µg/L. This level is three times less than the 10,500 µg/L level previously mentioned.

Effects on Birds

Kraabel *et al.* (1996) surgically embedded tungsten-bismuth-tin shot in the pectoralis muscles of ducks to simulate wounding by gunfire and to test for toxic effects of the shot. The shot neither produced toxic effects nor induced adverse systemic effects in the ducks during the 8-week period of their study.

Nell *et al.* (1981a) fed laying hens (*Gallus domesticus*) 0.4 or 1.0 g/kg tungsten in a commercial mash for 5 months to assess reproductive performance. Weekly egg production was normal, and hatchability of fertile eggs was not affected. Exposure of chickens to large doses of tungsten either through injection or by feeding resulted in an increased tissue concentration of tungsten and a decreased concentration of molybdenum (Nell *et al.* 1981b). The loss of tungsten from the liver occurred in an exponential manner, with a half-life of 27 hours. The alterations in molybdenum metabolism seemed to be associated with tungsten intake rather than molybdenum deficiency. Death due to tungsten occurred when tissue concentrations increased to 25 ppm in the liver.

A 150-day chronic toxicity/reproductive study conducted for tin shot revealed no adverse effects in mallards dosed with eight No. 4 sized shot. In this investigation, there were no significant changes in egg production, fertility, or hatchability of birds dosed with tin when compared to steel-dosed birds (Gallagher *et al.* 2000).

Toxicity Studies

Ringelman *et al.* (1993) conducted a 32-day acute toxicity study that involved dosing game-farm mallards with tungsten-bismuth-tin shot in a relative composition of 39%, 44.5%, and 16.5% by weight, respectively. No dosed birds died during the trial, and their behavior was normal. Post-euthanization examination of tissues revealed no toxicity or damage related to shot exposure. Blood calcium differences between dosed and undosed birds were judged as unrelated to shot exposure. That study indicated that tungsten presented little hazard to waterfowl.

The Tier 1 application of TINT shot included analyses comparing corrosion data of TNI shot to TINT shot. Samples of both shot types were exposed to seawater for 10.8 days. The two seawater samples were then analyzed for nickel, iron, tungsten, and tin. Samples were then returned to fresh seawater and exposed for an additional 44.5 days, whereupon the seawater solutions were again analyzed for nickel, iron, tungsten, and tin.

The total release of nickel from TINT shot over the 55.3-day exposure was only 13% that of TNI shot. The results indicate that TINT shot shows lower rates of nickel release due to the collection of corrosive materials on surfaces that inhibit additional corrosion.

Assuming that a duck eats 10 # 4 TINT shot in one day and that the shot are completely eroded in the gizzard in 24 hours, the duck would be exposed to .061g of nickel. This amount is slightly more than half of the .102g/day that Eastin and O'Shea (1981) found produced no ill effects on mallards. We believe, therefore, that consumption of nickel from TINT shot is unlikely to have detrimental effects on waterfowl.

Ingestion by Fish, Amphibians, Reptiles, or Mammals

Based on the best available information and past reviews of tungsten-based and tin shot, we expect no detrimental effects due to tungsten, iron, or tin on animals that might ingest TINT shot. We know of no studies of ingestion of nickel by reptiles or amphibians. The exposure of nickel to any animal in these taxa that might consume a TINT shot pellet would be lower, because the pellet likely would not be retained in most animals that might consume one. Their exposure to nickel would therefore be much lower than the worst-case scenario for waterfowl.

Nontoxic Shot Approval Process

The first condition for nontoxic shot approval is toxicity testing. Based on the results of past toxicity tests, we conclude that TINT shot does not pose a significant danger to migratory birds, other wildlife, or their habitats.

The second condition for approval is testing for residual lead levels. We determined that the maximum environmentally acceptable level of lead in shot is 1%, and incorporated this requirement in the nontoxic shot approval process we published on December 1, 1997 (62 FR 63608). ENVIRON-Metal, Inc. has documented that TINT shot meets this requirement.

The third condition for approval involves enforcement. On August 18, 1995 (60 FR 43314), we stated that approval of any nontoxic shot would be contingent upon the development and availability of a noninvasive field testing device. This requirement was incorporated in the nontoxic shot approval process. TINT shotshells can be drawn to a magnet as a simple field detection method.

This proposed rule will amend 50 CFR 20.21(j) by approving TINT shot as nontoxic for migratory bird hunting. It is based on the toxicological reports, acute toxicity studies, and assessment of the environmental effects of the shot. Those results indicate no deleterious effects of TINT shot to ecosystems or when ingested by waterfowl.

Public Comments Solicited

Past proposed rules on approval of nontoxic shot have generated fewer than five comments. Also, tungsten and iron already have been reviewed extensively for use in nontoxic shot. Therefore, we

will accept comments on this proposal for a 30-day period.

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NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we have prepared a draft Environmental Assessment (EA) for approval of TINT shot. The draft EA is available to the public at the location indicated in the **ADDRESSES** section.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 et seq., provides that Federal agencies shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * * '' We are completing a Section 7 consultation under the ESA for this proposed rule. The result of our consultation under

Section 7 of the ESA will be available to the public at the location indicated in the **ADDRESSES** section.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. This rule proposes to approve an additional type of nontoxic shot that may be sold and used to hunt migratory birds; this proposed rule would provide one shot type in addition to the existing six that are approved. We have determined, however, that this proposed rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others.

Small Business Regulatory Enforcement Fairness Act

Similarly, this policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This policy does not impose an unfunded mandate of more than $100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because it is the Service's responsibility to regulate the take of migratory birds in the United States.

Executive Order 12866

This proposed rule is not a significant regulatory action subject to OMB review under Executive Order 12866. OMB makes the final determination under E.O. 12866. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and found it to contain no information collection requirements.

Unfunded Mandates Reform

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

We have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This proposed rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this proposed rule will allow hunters to exercise privileges that would be otherwise unavailable and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. This proposed rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, this proposed regulation does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) Executive Order 13175, and 512 DM 2, we have determined that this proposed rule has no effects on Federally recognized Indian tribes.

Energy Effects

In accordance with Executive Order 13211, this proposed rule, authorized by the Migratory Bird Treaty Act, does not significantly affect energy supply, distribution, and use. This proposed rule is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons discussed in the preamble, we propose to amend part 20, subchapter B, chapter 1 of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; 16 U.S.C. 742 a–j, Pub. L. 106–108.

2. In § 20.21, revise paragraph (j) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j) While possessing loose shot for muzzle loading or shotshells containing other than the previously approved shot types of steel, bismuth-tin (97 parts bismuth: 3 parts tin), tungsten-iron (40 parts tungsten: 60 parts iron) , tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11), tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer), tungsten-nickel-iron (50% tungsten: 35% nickel: 15% iron), and tungsten-iron-nickel-tin (65% tungsten: 10.4% iron: 2.8% nickel: 21.8% tin) all of which must contain less than 1% residual lead (see § 20.134). This restriction applies to the taking of ducks, geese (including brant), swans, coots (*Fulica americana*), and any other species that make up aggregate bag limits during concurrent seasons in areas described in § 20.108 as nontoxic shot zones.

* * * * *

Dated: April 26, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–11767 Filed 5–9–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 91
Friday, May 10, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–02–05]

Flue-Cured Tobacco Advisory Committee; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of a forthcoming meeting of the Flue-Cured Tobacco Advisory Committee.

DATES: The meeting will be held on May 21, 2002, at 9 a.m.

ADDRESSES: The meeting will be held at the United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Tobacco Programs, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the implementation of mandatory grading, establish alternate grading schedules, and discuss other related issues for the 2002 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by May 15, 2002, and inform us of your needs.

Dated: May 7, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–11801 Filed 5–7–02; 4:28 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–030–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations to prevent the introduction of gypsy moth into noninfested areas of the United States from Canada..

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 9, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–030–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–030–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–030–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information on the regulations regarding importation of gypsy moth host materials from Canada, contact Mr. Frederick A. Thomas, Export Specialist, PIM, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 734–8367. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Gypsy Moth Host Materials from Canada.

OMB Number: 0579–0142.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture is responsible for preventing plant pests from entering the United States and controlling and eradicating plant pests in the United States. The Plant Protection Act authorizes the Department to carry out this mission. The Plant Protection and Quarantine program of USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for implementing the regulations that carry out the intent of the Act.

To carry out this mission, APHIS administers regulations in 7 CFR 319.77–1 through 319.77–5 to prevent the introduction of gypsy moth into noninfested areas of the United States from Canada by placing certain inspection and documentation requirements on gypsy moth host materials (*i.e.*, regulated articles) from Canada. These regulated articles are: Trees without roots (*e.g.*, Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with bark attached,

outdoor household articles, and mobile homes and their associated equipment. Under these regulations, phytosanitary certificates, certifications of origin, or signed homeowner statements will be required for some of these regulated articles, depending on their place of origin in Canada and their destination in the United States. These requirements necessitate the use of information collection activities.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.03632 hours per response.

Respondents: Canadian plant health authorities; growers; exporters of Christmas trees, shrubs, logs, pulpwood, and other articles from gypsy moth-infested provinces in Canada; private individuals entering the United States with a mobile home or outdoor household articles.

Estimated annual number of respondents: 2,146.

Estimated annual number of responses per respondent: 1.03914.

Estimated annual number of responses: 2,230.

Estimated total annual burden on respondents: 81 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of May, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–11725 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Food Stamp Program Web-Based Pre-Screening Tool

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The information collection being proposed involves the use of a web-based pre-screening tool for the general public to use to determine potential eligibility for Food Stamp Program benefits. Some data provided by the users will be captured and retained for analytical purposes.

DATES: Written comments must be submitted on or before July 9, 2002, to be assured consideration.

ADDRESSES: Send comments to Pat Seward, Outreach Coordinator, State Administration Branch, Food Stamp Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 820, Alexandria, VA 22302.

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION: Requests for additional information should be directed to Pat Seward at (703) 305–2328.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program Web-Based Pre-Screening Tool.

OMB Number: To be assigned by OMB.

Form Number: None.

Expiration Date: The Food and Nutrition Service (FNS) is requesting approval from OMB for three years.

Type of Request: This is a new information collection request.

Abstract: FNS is developing an interactive web-based food stamp pre-screening tool to be utilized by the general public to determine potential Food Stamp Program eligibility pursuant to 7 USC 2014. Once the user enters household size, income, expenses and resource information, the tool will calculate and provide the user with an estimated range of benefits that the household may be eligible to receive. Since food stamp eligibility and benefit amount may vary by location, FNS will provide a disclaimer that the tool is only an estimator, and the household will need to contact the local agency to determine actual eligibility and the appropriate benefit amount.

While FNS will not capture and retain any specific identifying or eligibility-related information about the household itself that uses the tool, it will request and retain the following information:

- The State where the user resides;
- Whether the user is using the tool for personal reasons or on behalf of others; and
- If the user is using it on the behalf of others; the user will be asked to identify him/herself (*i.e.,* relative of a person in need, advocacy organization, faith-based group, *etc.*) using a drop down menu.

This information will help FNS determine the degree and type of system usage as well as potential areas for further study. There may also be a formal survey appended to this tool but any such survey and proposed information collection will be announced under a separate notice.

Affected Public: Potential food stamp applicants and those using the tool on their behalf.

Estimated Number of Respondents: 48,000 per year.

Number of Responses per Respondent: 1.

Total Number of Annual Responses: 48,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden: 8,000 hours.

Dated: April 25, 2002.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 02–11674 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead, Lolo, and Bitterroot National Forests, Northern Region

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to revise the Land and Resource Management Plans (Forest Plans) for the Flathead, Lolo and Bitterroot National Forests.

SUMMARY: This notice announces the beginning of the efforts to revise the Land and Resource Management Plans (Forest Plans) for the Flathead, Lolo and Bitterroot National Forests. The Forest Plan revision will be done jointly with the Flathead, Lolo and Bitterroot National Forests. The beginning efforts are to establish a planning team and evaluate information needs. Public involvement is critical and will be requested throughout this effort. The forests are developing a communication strategy to document how the public and government entities may participate in the revision of the Forest Plan.

ADDRESSES: Send written comments concerning this notice and requests to be added to the Forest Plan revision mailing list to Cathy Barbouletos, Forest Supervisor, Flathead National Forest, 1935 Third Avenue East, Kalispeel, MT 59901.

FOR FURTHER INFORMATION CONTACT: Terry Chute, Planning Staff, Flathead National Forest, phone (406) 758–5243; Barb Beckes, Planning Program Officer, Lolo National Forest, phone (406) 329–3809; or Sue Heald, Planning Staff, Bitterroot National Forest, phone (406) 363–7142.

SUPPLEMENTARY INFORMATION: The Forest Plans for the Flathead and Lolo National Forests were completed in 1986, while the Forest Plan for the Bitterroot National Forest was completed in 1987. These plans will remain in effect and continue to be implemented until they are revised. In the past, a ''Notice of Intent to Prepare an Environmental Impact Statement'' was issued at the beginning of the forest planning process. This Notice addresses initiation of revision where the focus will be on collaboration with the public, organizing the revision team and information evaluation. Once the scope of the revision is better understood the Forests will issue another Notice to prepare the Environmental Impact Statement.

This Notice initiates revision under the 1982 planning regualtions (36 CFR 219). The Forest Service is also preparing new draft planning regulations expected to be issued in the spring of 2002. When these new regulations are adopted, the Forests will consider whether to operate under the new or the 1982 regulations. An additional Notice will be issued if the Forests decide to operate under the new regulations.

Dated: May 3, 2002.

Kathleen A. McAllister,

Deputy Regional Forester, Forest Service-Northern Region.

[FR Doc. 02–11708 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Dixie National Forest, Intermountain Region, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to revise the Land and Resource Management Plan (Forest Plan) for the Dixie National Forest.

SUMMARY: This notice announces the intent of the Dixie National Forest to revise their Land and Resource Management Plan (Forest Plan). The revision will start under the 1982 planning regulations (36 CFR part 219). Initial steps of the revision process will focus on a communication strategy, organizing the revision team, information needs, resource inventory reviews, and establishing a Forest Plan revision mailing list. The forest is developing a communication strategy to engage interested people and groups early in the revision process. Public involvement is critical and will be requested throughout the revision effort. The Forest Plan revision will be done jointly with the fishlake National Forest.

ADDRESSES: Send written comments concerning this notice, communication strategy and requests to be added to the Forest plan revision mailing list to Mary Wagner, Forest Supervisor, Dixie National Forest, 1789 N. Wedgewood Lane, Cedar City, UT 84720.

FOR FURTHER INFORMATION CONTACT: Anthony Erba, Forest Planner, Dixie National Forest, 1789 N. Wedgewood Lane, Cedar City, UT 84720; phone (435) 865–3737.

SUPPLEMENTARY INFORMATION: The Forest Plan for the Dixie National Forest was completed in September 1986 and will remain in effect and continue to be implemented until the Plan is revised. In the past, a ''Notice of Intent to Prepare an Environmental Impact Statement'' was issued at the beginning of the forest planning process. This Notice addresses initiation of revision where the focus will be on collaboration with the public, organizing the revision team and information evaluation. Once the scope of the revision is better understood, the Forest will issue another Notice to prepare the Environmental Impact Statement.

This Notice initiates revision under the 1982 planning regulations (36 CFR part 219). The Forest Service is also preparing new draft planning regulations expected to be issued in the spring of 2002. Since these new regulations will reflect the latest national thinking on land and resource management planning, the Forest wills seriously consider switching to, and completing the forest plan revision under, the new regulations when they are finalized. An additional Notice will be issued if the Forest decides to switch.

Authority: 40 CFR 1501.7 and 1508.22, Forest Service Handbook 1909.15, Section 21).

Dated: April 26, 2002.

Mary Wagner,

Forest Supervisor, Dixie National Forest.

[FR Doc. 02–10973 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Holly Beach to Constance Beach Segmented Breakwaters Enhancement and Sand Management Project, Cameron Parish, LA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102 (2) (c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service,

U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Holly Beach to Constance Beach Segmented Breakwaters and Sand Management Project, Cameron Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the project is to protect existing coastal wetlands, local communities and reduce damages to Louisiana Highway 82 during storm events by restoring and maintaining the integrity and functionality of the remaining Cheniere/Beach ridge that runs from Holly Beach to Constance Beach. This will be accomplished by the creation of beach dune and marsh habitat and reducing local wave energies by increasing the effectiveness of the existing breakwater field.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Bruce Lehto, Assistant State Conservationist/Water Resources/Rural Development, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7756.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: April 25, 2002.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 02–11699 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #490, Forest Site Preparation and #612, Tree/Shrub Establishment to account for improved technology. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1665; Fax number (804) 287–1736. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS web site: *http://www.va.nrcs.usda.gov/DataTechRefs/Standards&Specs/EDITStds/EditStandards.htm.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: April 26, 2002.

L. Willis Miller,

Assistant State Conservationist for Programs, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 02–11698 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

EFFECTIVE DATE: June 9, 2002.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On October 5, 2001, March 8, and March 15, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (66 F.R. 51005, 67 FR 10663, 10664, and 11661) of proposed additions to the Procurement List.

The following comments pertain to the Janitorial/Custodial Service, Ronald Reagan Building at the Federal Tenant Spaces only, Washington, DC.

Comments were received from a subcontractor to the current contractor for this service. The subcontractor claimed that addition of this service to the Procurement List would have a severe adverse impact on the company. The subcontractor also questioned whether the addition met Committee regulatory requirements concerning creation of employment opportunities and qualification of the designated nonprofit agency to participate in the Committee's program. The Committee's regulation, at 41 CFR 51–2.4(a)(4), requires the Committee to assess impact of a Procurement List addition on the

current contractor. This requirement exists because the current contractor is usually the most likely organization to win a competition for the next contract for the service in question, if it is not added to the Procurement List. Whether a subcontractor will continue to hold a subcontract for a service is at the discretion of the contractor, not the competitive procurement process or the Government contracting activity. Accordingly, the Committee does not consider impact on a subcontractor to constitute the severe adverse impact on the current contractor which the Committee's regulation requires the Committee to avoid in making its Procurement List addition decisions.

The subcontractor's contentions concerning the nonprofit agency's capability and program qualification are based on the subcontractor's beliefs that the people to be employed are not capable of safely operating machinery or otherwise performing some of the tasks involved in providing this janitorial service, and that security requirements will require the nonprofit agency to permanently retain people without disabilities who currently hold security clearances to work in the building. This service does not have specialized equipment or performance requirements unlike other janitorial services performed by this nonprofit agency. The Committee's determination that the nonprofit agency is capable of performing this service was based on an assessment by an industrial engineer who is familiar with the capabilities of the nonprofit agency and the Government customer. The Committee has approved a phase-in of the people with severe disabilities who will perform the service. One reason for the phase-in is to allow time for security clearances to be granted. Current employees with security clearances will be retained only as long as they are needed to meet the Government's requirements.

The following material pertains to all of the items being added to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will not have a severe economic impact on current contractors for the products and services.

3. The action will result in authorizing small entities to furnish the products and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C.46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Holder, Key and Credit Card/7510–01–445–9348
NPA: The Travis Association for the Blind, Austin, TX
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY
Product/NSN: Holder, Key and Credit Card, with Custom Logo/7510–01–NIB–0613
NPA: The Travis Association for the Blind, Austin, TX
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY

Services

Service Type/Location: Janitorial/Custodial/Alton Federal Building, Alton, IL
NPA: Challenge Unlimited, Inc., Alton, IL
Contract Activity: GSA, Public Buildings Service
Service Type/Location: Janitorial/Custodial/Ronald Reagan Building at the Federal Tenant Spaces only, Washington, DC
NPA: The Chimes, Inc., Baltimore, MD
Contract Activity: GSA, Public Buildings Service
Service Type/Location: Janitorial/Grounds Maintenance/Ed Jones Federal Building & U.S. Courthouse, Jackson, TN
NPA: Madison Haywood Developmental Services, Jackson, TN
Contract Activity: GSA, Public Buildings Service
Service Type/Location: Janitorial/Grounds Maintenance/Federal Building & U.S. Post Office, Dyersburg, TN
NPA: Madison Haywood Developmental Services, Jackson, TN
Contract Activity: GSA, Public Buildings Service
Service Type/Location: Mailroom/Communications Center Operation/U.S. Department of Agriculture, Kansas City, MO
NPA: Independence & Blue Springs Industries, Inc., Independence, MO
Contract Activity: Department of Agriculture
Service Type/Location: Shipboard & Shore-Based Logistics/CONUS Facilities for the Navy and Various other DOD Military Installations (20% of the Government's Requirement)
NPA: The Arc of the Virginia Peninsula, Inc., Hampton, VA
Contract Activity: Training & Doctrine Command (TRADOC) Acquisition Center
Service Type/Location: Switchboard Operation/Tennessee Valley Healthcare System, Murfreesboro, TN
NPA: Prospect Inc., Lebanon, TN
Contract Activity: Department of Veterans Affairs

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

3. The action will result in authorizing small entities to furnish the products and service to Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products and service are hereby deleted from the Procurement List:

Products

Product/NSN: Hood, Sleeping Bag/8465–00–518–2769
NPA: North Bay Rehabilitation Services, Inc., Rohnert Park, CA
Contract Activity: Defense Supply Center—Philadelphia, Philadelphia, PA
Product/NSN: Stamp, Rubber/7520–00–NSH–0001
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0002
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0003
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0004
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0005

NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0006
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0007
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0008
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0009
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0010
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0011
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0012
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0013
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0014
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0015
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0016
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0017
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0018
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0019
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0020
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0021
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0022
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0023
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0024
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0025
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0026
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0027
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0028
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0029
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0030
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0031
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0032
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0033
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0034
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0035
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0036
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0037
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0038
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0045
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0046
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0047
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0048
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0049
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0050
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0051
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0052
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0053
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0054
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0055
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0056
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0057
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0058
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0059
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0060
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0061
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0062
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0063
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0064
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0065
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0066
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0067
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0068

NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0069
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0070
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0071
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0072
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0073
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0074
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0075
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0076
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0077
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0078
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0079
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0080
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0081
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0082
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA

Service

Service Type/Location: Vehicle Operation and Maintenance/Travis AFB, CA
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Department of the Air Force

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–11752 Filed 5–9–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 9, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C.46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Base Supply Center, U.S. Army Signal Center, Fort Gordon, GA.
NPA: L.C. Industries For The Blind, Inc., Durham, NC.
Contract Activity: U.S. Army Signal Center, Fort Gordon, GA.
Service Type/Location: Food Service Attendant, Alabama Air National Guard, Birmingham, AL.
NPA: Alabama Goodwill Industries, Inc., Birmingham, AL.
Contract Activity: Alabama Air National Guard, Gadsden, AL.
Service Type/Location: Grounds Maintenance, Environmental Protection Agency, Environmental Science Center, Fort Meade, MD.
NPA: Baltimore Association for Retarded Citizens, Inc., Baltimore, MD.
Contract Activity: Environmental Protection Agency, Philadelphia, PA.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–11753 Filed 5–9–02; 8:45 am]

BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: May 14, 2002; 12 p.m.–1:30 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either

Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: May 8, 2002.

Carol Booker,

Legal Counsel.

[FR Doc. 02–11936 Filed 5–8–02; 3:09 pm]

BILLING CODE 8236–01–M

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: Commission on Civil Rights.

DATE AND TIME: Friday, May 17, 2002, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of April 12, 2002 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Arizona, Hawaii, Idaho, Kentucky, Oregon, and New York, and Approval of SAC the Chair for Washington State
VI. State Advisory Committee Report
- Race Relations in Waterloo

VII. Future Agenda Items
10:30 a.m. Briefing: Enforcement without Evidence? Consequences of Government Race Data Collection Bans of Civil Rights

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 02–11811 Filed 5–7–02; 4:29 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 020502107–2107–01]

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: This notice announces the Department's proposal for a new system of records.

The system is entitled ''Commerce/Census-9, Longitudinal Employer-Household Dynamics System.'' The Census Bureau will use these data to undertake studies intended to improve the quality of its core demographic and economic censuses and surveys and conduct policy-relevant research. By using administrative record data from other agencies, the Census Bureau will be able to improve the quality and usefulness of its data, while reducing costs and respondent burden. This notice is submitted in accordance with the requirements of the Privacy Act, Title 5, United States Code (U.S.C.), Section 552a, and Office of Management and Budget (OMB) Circular A–130, Appendix I, ''Federal Agency Responsibilities for Maintaining Records About Individuals.'' We invite public comment on the system announced in this publication.

DATES: *Effective Date:* The system will become effective without further notice on June 10, 2002, unless the Census Bureau receives comments that require a contrary determination.

Comment Date: To be considered, written comments must be submitted on or before June 10, 2002.

ADDRESSES: Please address comments to: Gerald W. Gates, Privacy Act Officer, Policy Office, Room 2430 FB 3, U.S. Census Bureau, Washington, DC 20233–3700. Comments received will be available for public inspection at this same address from 8:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Eloise Parker, Administrative Records Coordinator, Policy Office, Room 2430 FB 3, U.S. Census Bureau, Washington, DC 20233–3700; telephone: (301) 457–2520.

SUPPLEMENTARY INFORMATION: This notice is to announce the establishment of the Longitudinal Employer-Household Dynamics System and to request public comment. As required by 5 U.S.C. 552a(o) of the Privacy Act, the Commerce Department submitted reports on this new system to both Houses of Congress on May 10, 2002. The establishment of this system of records will be effective June 10, 2002, unless Commerce receives comments that would result in a contrary determination.

The purpose of the Longitudinal Employer-Household Dynamics System of records is to enable the Census Bureau to undertake studies intended to improve the quality of its core demographic and economic censuses and surveys and conduct policy-relevant research. By using administrative record data from other agencies, the Census Bureau will be able to improve the quality and usefulness of its data, while reducing costs and respondent burden.

This system will contain personally identifiable information from administrative record systems from two national-level files: Social Security's Numident and Master Earnings Files; and one state-level program: Unemployment Insurance Contribution and Employment Reporting System. Information from these administrative record systems will be combined with selected Census Bureau demographic and economic census and survey data, with the combined data used for census and survey planning and evaluation, and policy-relevant research. All personal identifiers from these files will be removed and replaced with Census Bureau-generated unique identifiers and maintained within a secured, restricted environment, with access limited to a select number of persons sworn to uphold the confidentiality of Census Bureau data. No public disclosure of these data will be made. All authorized uses of the data will be for statistical purposes only. An in-house Administrative Records Project Review Board will oversee all such Census Bureau uses of these data to ensure that they are used only for authorized purposes.

COMMERCE/CENSUS–9

SYSTEM NAME:

Longitudinal Employer-Household Dynamics System, COMMERCE/CENSUS—9.

SYSTEM LOCATION:

Bowie Computer Center, U.S. Census Bureau, 17101 Melford Boulevard, Bowie, MD 20715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The population of the United States. In order to approximate coverage of the entire U.S. population, the Census Bureau will combine administrative record files from the Internal Revenue Service, the Social Security Administration, selected Census Bureau economic and demographic censuses and surveys, and comparable data from selected state agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifiers— *e.g.*, name and social security number (this information will be replaced by Census Bureau-generated unique identifiers, which will be provided on statistical data files); Demographic information—*e.g.*, gender, race, ethnicity, education, marital status, tribal affiliation, veterans status; Geographic information—*e.g.*, address; Economic information—*e.g.*, income, job information, total assets; and

Processing information—*e.g.*, processing codes and quality indicators.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Title 13, U.S.C.

PURPOSE(S):

The purpose of the Longitudinal Employer-Household Dynamics System of records is to enable the Census Bureau to undertake studies intended to improve the quality of its core demographic and economic censuses and surveys and conduct policy-relevant research. By using administrative record data from other agencies, the Census Bureau will be able to improve the quality and usefulness of its data, while reducing costs and respondent burden.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These data will be used by the Census Bureau to evaluate and enhance selected survey data and to produce new data products and conduct analyses of the social and economic characteristics of the population. The administrative record files will be used both alone and in conjunction with Census Bureau census or survey data for these purposes. The data will not be used to identify specific individuals, but will be used to produce statistical extracts with information from one or more of the source files. These records are being maintained and used by the Census Bureau solely for statistical purposes and are confidential under Title 13, U.S.C., Section 9. Only persons sworn to uphold the confidentiality of Census Bureau information and who have a need to know will have access to the data. Publications will not contain data that could identify any individual or establishment. No determinations affecting individual respondents will be made as a result of this routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be stored in a secure computerized system and on magnetic tape; output data will be either electronic or paper copy. All identifiable data will be maintained in a secure environment, and access to identifiable information will be restricted to only a small number of persons sworn to uphold the confidentiality of Census Bureau data that have a need to know.

RETRIEVABILITY:

Records are maintained within a secure, restricted access environment and can be retrieved by unique serial identification numbers internal to the Census Bureau by only a limited number of persons sworn to uphold the confidentiality of Census Bureau data and who have a need to know. It should be noted that the purpose of these identifiers is not to facilitate retrieval of information concerning specific individuals, but only to develop matched data sets for subsequent statistical extracts.

SAFEGUARDS:

Only a limited number of persons sworn to uphold the confidentiality of Census Bureau data and who have a need to access these data will have access to them in identifiable form in order to construct the linked data sets and produce statistical extracts. The data will not be used to identify specific individuals, but will be used to create extracts containing information from one or more of the source files. Extract files will be released only to designated persons sworn to uphold the confidentiality of Census Bureau data and who have a need to know. The microdata will not be made publicly available. Any publications resulting from these data will be cleared for release under the direction of the Census Bureau's Disclosure Review Board, which will confirm that the data do not directly or indirectly disclose information that would identify any individual or establishment. All persons sworn to uphold the confidentiality of Census Bureau data are subject to the restrictions, penalties, and prohibitions of Title 13, U.S.C., Sections 9 and 214; the PrivacyAct of 1974 (5 U.S.C. 552a(b)(4)); Title 18, U.S.C., Section 1905; Title 26, U.S.C., Section 7213; and Title 42, U.S.C., Section 1306. When confidentiality or penalty provisions differ, the most stringent provisions apply to protect the data. Persons sworn to uphold the confidentiality of Census Bureau data are regularly advised of the regulations issued pursuant to Title 13, U.S.C., and other relevant statutes governing confidentiality of the data. The restricted access environment has been established to limit the number of persons having direct access to identifiable microdata from this system. While all persons with access to this system are sworn to uphold the confidentiality of Census Bureau data, this restricted access environment further protects the confidentiality of the data and prevents unauthorized use of or access to it. These safeguards provide a level and scope of security that is not less than the level and scope of security established by the Office of Management and Budget in OMB Circular No. A–130, Appendix III, Security of Federal Automated Information Systems. Furthermore, the use of unsecured telecommunications to transmit individually identifiable or deducible information derived from the administrative record files is prohibited.

RETENTION AND DISPOSAL:

Retention and disposal practices are in accordance with the General Records Schedule and Census Bureau records control schedules that are approved by the National Archives and Records Administration. Each of the agreements between the Census Bureau and the administrative record source agencies contain specific language pertaining to retention and disposal. Retention is not to exceed 10 years, unless, by agreement with the source agency, it is determined that a longer period is necessary for statistical purposes. At the end of the retention period or upon demand, all original files, extracts, and paper copies from each agency will be returned to the source agency or destroyed as stated in the respective interagency agreement.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Demographic Programs, U.S. Census Bureau, FOB 3, Washington, DC 20233.

CUSTODIAN:

Director, Longitudinal Employer-Household Dynamics Program, Demographic Surveys Division, Demographic Programs Directorate, U.S. Census Bureau, FOB 3, Washington, DC 20233.

RECORD SOURCE CATEGORIES:

Selected state and federal administrative record systems and Census Bureau censuses and surveys.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

Pursuant to Title 5, U.S.C., Section 552a(k)(4), this system of records is exempted from the notification, access, and contest requirements of the agency procedures (under Title 5, U.S.C., Section 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)). This exemption is applicable, as the data are maintained by the Census Bureau solely as statistical records, as required under Title 13, U.S.C., and are not used in whole or in part in making any determination about an identifiable individual or establishment. This exemption is made in accordance with agency rules published in the rules section of the **Federal Register**.

Dated: May 7, 2002.

Brenda S. Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 02–11774 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 22–2002]

Foreign-Trade Zone 39—Dallas/Fort Worth, TX; Expansion of Subzone 39E, Fossil Partners, L.P. (Watches and Consumer Goods)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, requesting on behalf of the watch and accessories warehousing/distribution facility of Fossil Partners, L.P. (Fossil) to expand Subzone 39E, located in Richardson, Texas. The applicant requests the addition of a new site in Dallas, Texas. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 1, 2002.

Subzone 39E was approved on December 3, 1997 (Board Order No. 937, 12/10/97). Authority was granted for the warehousing/distribution of watches and accessories at the Fossil facility. The original authority covered a facility located at 2280 N. Greenville Avenue (300,000 sq. ft., 20.41 acres) in Richardson, Texas. On January 28, 2002, authority was granted for a minor boundary modification (A(27f)–7–02), which allowed the company to temporarily relocate its subzone designation (300,000 sq. ft.) to a facility located at 10615 Sanden Drive (517,000 sq. ft., 47.5 acres), in Dallas, Texas.

Fossil requests an expansion of subzone status that would cover its entire Dallas (Sanden Drive) site (517,000 sq. ft.; 47.5 acres). The company also requests a reinstatement of the 300,000 sq. ft. at the Richardson, Texas facility, that was deleted in the January 2002 action that is described above. The nature of the original warehousing/distribution operation at the subzone remains unchanged in terms of products and activities. The level of activity would increase commensurate with the increase in the size of the facility (300,000 sq. ft. to 517,000 sq. ft.).

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street NW, Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW, Washington, DC 20230.

The closing period for their receipt is July 9, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 24, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board at the first address listed above and the U.S. Department of Commerce, Export Assistance Center, 711 Houston Street, Fort Worth, Texas 76102.

Dated: May 1, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–11772 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–835]

Oil Country Tubular Goods (OCTG) From Japan: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to a request from petitioner, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Japan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 49924 (October 1, 2001). This review covers four manufacturers/exporters of OCTG for the period from August 1, 2000 through July 31, 2001. Because the petitioner has withdrawn its request for review, the Department is rescinding its review of OCTG from Japan, in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Maureen Flannery, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1395 or (202) 482–3020, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the Federal Register the antidumping duty order on OCTG from Japan on August 11, 1995. *See Antidumping Duty Order: Oil Country Tubular Goods From Japan*, 60 FR 41058 (August 11, 1995). The Department received a timely request from petitioner, United States Steel LLC, to conduct an administrative review pursuant to section 351.213(b) of the Department's regulations. On September 24, 2001, the Department initiated an administrative review covering four manufacturers/exporters of OCTG: Kawasaki Steel Corporation, Nippon Steel Corporation, NKK Steel Corporation/NKK Tubes, and Sumitomo Metal Industries, Ltd. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 66 FR 49924 (October 1, 2001). On April 5, 2002, petitioner withdrew its request for administrative review with respect to all four respondents named in the initiation.

Rescission of Antidumping Administrative Review

Pursuant to our regulations, the Department will rescind an administrative review ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' See 19 CFR 351.213(d)(1). This section further provides that the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. *See* 19 CFR 351.213(d)(1). In this case, the interested party's withdrawal of its requests for review was not within the 90–day time

limit. However, because there were no objections from other interested parties and no other parties had requested a review, the Department is rescinding the administrative review of OCTG from Japan for the period August 1, 2000, through July 31, 2001. *See Memorandum for the File through Barbara Tillman, Director, Office of AD/CVD Enforcement VII, from Doug Campau, Analyst: Oil Country Tubular Goods From Japan: Intent to Rescind Administrative Review for the Period of 8/1/00 to 7/31/01*, dated April 22, 2002.[1] The Department will issue appropriate assessment instructions to the U.S. Customs Service (Customs).

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with 19 CFR 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–11769 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804]

Certain Preserved Mushrooms From Chile: Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Administrative Review.

SUMMARY: On January 4, 2002, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on certain preserved mushrooms from Chile (67 FR 562). The review covers three exporters. The period of review is December 1, 1999, through November 30, 2000.

We received comments on our preliminary results. After consideration of these comments, we have not made any changes in the margin calculations. Therefore, the final results are the same as the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: May 10, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Sophie E. Castro, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the U.S. Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

On January 4, 2002, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on certain preserved mushrooms from Chile (67 FR 562). This review covers the following companies: Nature's Farm Products (Chile) S.A. (NFC), Ravine Foods Inc. (Ravine), and Compañia Envasadora del Atlantico (CEA). We invited parties to comment on the preliminary results of review. We received a case brief from CEA on February 1, 2002. The petitioner[1] submitted a rebuttal brief on February 11, 2002. CEA's request for a hearing was subsequently withdrawn. We have conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus and Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

We have made no changes to our preliminary results. All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated May 6, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an

[1] On April 23, 2002, we faxed this memorandum to all interested parties, and informed them of our intent to rescind this review in the very near future. See Memorandum for the File from Christian Hughes, Analyst: Oil Country Tubular Goods From Japan: Notification to Interested Parties of Intent to Rescind, dated April 23, 2002.

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Toughkenamon, PA; Monterey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that the following margin percentages exist:

Manufacturer/exporter	Margin (percent)
Nature's Farm Products (Chile) S.A.(including merchandise shipped by the Colombian firm Compañia Envasadora del Atlantico)	148.51
Ravine Foods	148.51

Assessment Rates and Cash Deposit Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will instruct the Customs Service to apply on an importer-specific basis the assessment rates against the customs values for the subject merchandise entered during the review period. We will also instruct the Customs Service to apply a specific rate to all CEA entries manufactured by NFC and sold to CEA.

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rates indicated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rates will continue to be the company-specific rates published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 148.51 percent, the ''All Others'' rate made effective by the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to

liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 3, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix List of Issues

*Comment 1:*Application of Antidumping Duty Margin to Full Value of CEA's Sales

*Comment 2:*NFC's Knowledge of Export Destination

[FR Doc. 02–11771 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review

AGENCY: AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 10, 2002.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China. The review covers exports of this merchandise to the United States for the period August 1, 2000 through July 31, 2001, and two firms: Zhenxing Chemical Industry Company (Zhenxing) (also known as Baoding Mancheng Zhenxing Chemical Plant) and Xinyu Chemical Plant (Xinyu) (formerly known as Yude Chemical Industry Company). The preliminary results of this review indicate that there are dumping margins only for Zhenxing. We are preliminarily rescinding the review with respect to Xinyu because Xinyu did not export the subject merchandise to the United States during the period of review (POR). Interested parties are invited to comment on these preliminary results. See ''Public Comment'' section of this notice. The dumping margins are listed below in the ''Preliminary Results of the Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Dana Mermelstein, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230 at (202) 482–3964 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's.32 regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background:

On August 1, 2001, the Department published in the **Federal Register** (66 FR 39729) a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on sulfanilic acid from the People's Republic of China, for the August 1, 2000 through July 31, 2001 period of review (POR). In accordance with 19 CFR 351.213(b), Zhenxing requested an administrative review for the aforementioned period on August 27, 2001. Petitioner, Nation Ford Chemical Company, also requested an administrative review of Zhenxing and Xinyu on August 30, 2001. On October 1, 2001, we published a notice of ''Initiation of Antidumping Review'' that included Zhenxing and Xinyu as part of this administrative review. *See* 66 FR 49924, which is being conducting pursuant to section 751(a) of the Act.

Zhenxing, a Chinese manufacturer described as a joint venture with U.S.-

based importer PHT, reported sales of subject merchandise to the United States during the POR in its December 21, 2001 response to Section A of the Department's questionnaire. On January 14, 2002, Zhenxing submitted its response to Sections C and D of this questionnaire. Corrections to sections C and D were filed by Zhenxing on the following day, January 15, 2002.

Zhenxing submitted its response to the Department's first supplemental questionnaire on March 6, 2002. On April 15, 2002, Zhenxing responded to the Department's second supplemental questionnaire.

Partial Rescission:

The Department conducted a query of U.S. Customs Service data on entries of sulfanilic acid from the People's Republic of China made during the POR, and confirmed that Xinyu made no entries during the review period. Therefore, we preliminarily determine to rescind the review with respect to Xinyu.

Scope of Review:

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Review:

The review period is August 1, 2000 through July 31, 2001.

Separate Rate Analysis:

It is the Department's standard policy to assign to all exporters of the merchandise subject to review in non-market economy countries a single rate, unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. *See Mitsubishi Heavy Industries, Ltd., v. U.S.*, 54 F. Supp. 2d 1183 (CIT 1999). To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in a non-market economy (''NME'') country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''Sparklers''), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''Silicon Carbide''). Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to sign contracts and other agreements.

1. Absence of *De Jure* Control

With respect to the absence of *de jure* government control over the export activities of Zhenxing, evidence on the record indicates that Zhenxing's export activities are not controlled by the government. In its questionnaire response, Zhenxing stated that it is an independent legal entity. Zhenxing submitted evidence of its legal right to set prices independent of all government oversight. Our review of Zhenxing's joint venture and business licenses indicates that it is permitted to engage in the exportation of sulfanilic acid. We preliminarily find no evidence of *de jure* government control restricting Zhenxing from the exportation of sulfanilic acid.

2. Absence of *De Facto* Control

With respect to the absence of *de facto* control over export activities, the information provided and reviewed at verification indicates that the management of Zhenxing, itself, is responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for this company. In addition, we have found that the respondent's pricing and export strategy decisions are not subject to the review or approval of any outside entity, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on Zhenxing's use of its export earnings. The company's management has the right to negotiate and enter into contracts and may delegate this authority to other company employees. There is no evidence that this authority is subject to any level of governmental approval. According to Zhenxing, the general manager is appointed by the Board of Directors, and management is selected by the general manager in consultation with the board of directors. Zhenxing stated that there is no government involvement in this selection process.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over its export activities, we preliminarily determine that a separate rate should be applied to Zhenxing. For further discussion of the Department's preliminary determination regarding the issuance of separate rates, *see* Separate Rates Decision Memorandum for Barbara Tillman, Director, Office of AD/CVD Enforcement VII, dated May 3, 2002. A public version of this memorandum is on file in the Department's Central Record Unit (CRU).

United States Price:

Zhenxing reported as constructed export price (''CEP'') the U.S. sales made by PHT on behalf of Zhenxing. We calculated CEP based on FOB prices to unaffiliated purchasers in the United States. In past reviews, we have found Zhenxing and PHT to be affiliated, and

there has been no change in their affiliation during this review period. We made deductions for foreign inland freight, ocean freight, marine insurance, U.S. customs duties, U.S. transportation, credit, repacking in the United States, indirect selling expenses, inventory carrying costs, and constructed export price profit, as appropriate, in accordance with sections 772(c) and (d) of the Act. *See* Preliminary Analysis Memorandum dated May 3, 2002, a pubic version of which is on file in the CRU.

For foreign inland freight and ocean freight, respondent reported that these services were provided by NME companies. We valued these expenses using surrogate rates from India. Where appropriate, we calculated expenses which were incurred in U.S. dollars based on the actual U.S. dollar amounts paid for such expenses.

Normal Value:

Section 773(c)(1) of the Act provides that the Department shall determine normal value (''NV'') using a factors of production methodology if (1) the merchandise is exported from a non-market economy (NME) country, and (2) the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Accordingly, we treated the PRC as an NME country for purposes of this review and we calculated NV by valuing the factors of production as set forth in section 773(c)(3) of the Act in a comparable market economy country which is a significant producer of comparable merchandise. Pursuant to section 773(c)(4) of the Act, we determined that India is comparable to the PRC in terms of per capita gross national product (''GNP''), the growth rate in per capita GNP, and the national distribution of labor; and that India is a significant producer of comparable merchandise. The Department has selected India as the surrogate country in the investigation and all prior administrative reviews of this order. *See Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China*, 57 FR 9409, 9412 (March 18, 1992). For further discussion of the Department's selection of India as the primary surrogate country, *see* Memorandum from Jeffrey May, Director, Office of Policy, to Dana Mermelstein, Program Manager, Office of AD/CVD Enforcement VII, dated March 8, 2002, and the ''Surrogate Values Memorandum,'' dated May 3, 2002.

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For factor values where we used Indian import statistics, we did not include data pertaining to imports from non-market economy countries. *See e.g., Notice of Final Results of the Antidumping Duty Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China*, 63 FR 53872 (October 7, 1998). We also did not include imports from Indonesia, Korea, and Thailand because these countries maintain non-specific export subsidies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002).

For those surrogate values not contemporaneous with the POR, we adjusted for inflation where appropriate, using the Indian wholesale price indices (WPI) and U.S. producer price indices (PPI) published in the IMF's International Financial Statistics. When necessary, we adjusted the values for certain inputs reported in *Chemical Weekly* to exclude sales and excise taxes. In accordance with our practice, we added to CIF import values from India a surrogate inland freight cost using a simple average of the reported distances from either the closest PRC port to the factory, or from the domestic input supplier to the factory. *See Final Determination of Sales at Less that Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964, 61977 (November 20, 1997). In accordance with this methodology, we valued the factors of production as follows:

Consistent with our final results in the 1999–2000 administrative review (*see Sulfanilic Acid from the People's Republic of China*; Final Results of Administrative Review, 66 FR 1962 (January 15, 2001)), we used public price quotes to value aniline, sulfuric acid, sodium bicarbonate, and activated carbon. To value aniline used in the production of sulfanilic acid, we used the rupee per kilogram value for sales in India during the POR as reported in *Chemical Weekly*, excluding any amounts assessed for the Indian excise tax and sales tax. We made adjustments to include costs incurred for freight between the Chinese aniline suppliers and the Zhenxing factory. This price was adjusted for inflation to be concurrent with the POR.

The surrogate freight rates used in the calculation of transportation costs for material inputs and subject merchandise were based on price quotes for truck freight rates from six different Indian trucking companies which were used in the in the *Final Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805

(May 25, 2000) (*Bulk Aspirin*). We also used rail freight rates from *Bulk Aspirin* that were quoted by two Indian rail freight transporters. Both the trucking and rail freight rates were adjusted for inflation to be concurrent with the POR.

To value sulfuric acid used in the production of sulfanilic acid, we used the rupee per kilogram value for sales in India during the POR as reported in *ChemicalWeekly*, excluding the amounts assessed for the Indian excise tax and sales tax. We made additional adjustments to include costs incurred for freight between the Chinese sulfuric acid supplier and the Zhenxing factory in the PRC. This price was adjusted for inflation to be concurrent with the POR.

To value sodium bicarbonate used in the production of sodium sulfanilate, we used the rupee per kilogram value for sales in India during the POR as reported in Chemical Weekly, excluding the amounts assessed for the Indian excise tax and sales tax. We made additional adjustments to include costs incurred for freight between the Chinese sodium bicarbonate supplier and Zhenxing factory in the PRC. This price was adjusted for inflation to be concurrent with the POR.

We averaged public price quotes from two Indian chemical corporations to value activated carbon. These price quotes are specific to the type and grade of activated carbon used in the production of sulfanilic acid. We made adjustments to include costs incurred for inland freight between the Chinese activated carbon supplier and Zhenxing's factory in the PRC. This price was adjusted for inflation to be concurrent with the POR.

To value plastic bags used as packing materials, we used import information

from Indian *Import Statistics* that accounted for the period August 2000 through January 2001.

We adjusted these values to include freight costs incurred between the Chinese plastic bag suppliers and Zhenxing's factory in the PRC. This price was contemporaneous with the POR and therefore, not inflated.

Zhenxing reported its energy usage associated with steam coal and electricity. To value coal, we used import information from *Indian Import Statistics* that accounted for the period August 2000 through January 2001. We adjusted this value to include freight costs incurred between the coal supplier and Zhenxing's factory in the PRC. This price was contemporaneous with the POR and, therefore, not inflated. To value electricity, we used the price of industrial electricity in India in 1997 reported in *Energy, Prices, and Taxes, First Quarter 1999* published by the International Energy Agency. This price was adjusted for inflation to be concurrent with the POR.

The Department's regulations, at 19 CFR 351.408(c)(3), state that ''[f]or labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.'' To value the factor inputs for labor, we used the wage rates calculated for the PRC in the Department's ''Expected Wages of Selected Non-Market Economy Countries–1999 Income Data'' as updated in September 2001, and made public by the Department on its world-wide web site for Import Administration at *www.ia.ita.doc.gov*.

Following our practice from prior administrative reviews of sulfanilic acid from the PRC, for factory overhead, we used information reported in the *Reserve Bank of India Bulletin* (''*Bulletin*'') for Indian public companies in the chemical industry. We used updated information from the September 2001 *Bulletin*. From this information, we were able to determine factory overhead as a percentage of total cost of manufacturing.

To value ocean freight, we used a value provided by the Federal Maritime Commission used in the *Final Determination of the Antidumping Administrative Review of Sebacic Acid from the PRC*, 62 FR 65674 (December 15, 1997). We adjusted the value for ocean freight for inflation during the POR using the U.S. dollar PPI data published by the IMF.

For selling, general and administrative (SG&A) expenses, we used information reported in the September 2001 *Bulletin* for Indian public companies in the chemical industry. We calculated an SG&A rate by dividing SG&A expenses as reported in the *Bulletin* by the cost of manufacturing.

Finally, to calculate a profit rate, we used information reported in the September 2001 *Bulletin* for Indian public companies in the chemical industry. We calculated a profit rate by dividing the before-tax profit by the sum of those components pertaining to the cost of manufacturing plus SG&A as reported in the *Bulletin*.

For a complete discussion of the Department's selection of surrogate values and copies of source documents relating to their valuation, see the Department's ''Surrogate Values Memorandum,'' dated May 3, 2002.

Preliminary Results of Review:

We preliminarily determine the weighted average dumping margin for Zhenxing for the period August 1, 2000 through July 31, 2001 to be 46.27 percent.

Public Comment:

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Normally, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than ten days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date case briefs are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days, unless extended, after publication of these preliminary results.

Duty Assessments and Cash Deposit Requirements:

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue liquidation instructions directly to the Customs Service. Since the reported sales are CEP sales through a single affiliated importer, the liquidation instructions will recalculate the dumping margin on an entered value basis. Furthermore, the following deposit rates will be effective with respect to all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the reviewed company listed above will be the rate for that firm established in the final results of this review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rate will be the PRC-wide rate of 85.20 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties:

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties

occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777 (i)(1) of the Act.

Dated: May 3, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11770 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Stainless Steel Sheet and Strip in Coils from France: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on stainless steel sheet and strip in coils from France for the period January 1, 2000, through December 31, 2000. We have preliminarily determined that Ugine SA, the sole producer/exporter covered by this review, has received countervailable subsidies during the period of review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0176.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). Unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Case History

The Department published the countervailing duty order on stainless steel sheet and strip in coils from France on August 6, 1999 (A*mended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea,* 64 FR 42923 (August 6, 1999)). On August 1, 2001, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order for calendar year 2000 (*Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation,* 66 FR 39729). We received a review request from Ugine SA (''Ugine'') and we initiated this review on October 1, 2001 (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 66 FR 49924 (October 1, 2001)).

On October 26, 2001, we issued countervailing duty questionnaires to the Commission of the European Union (''EC''), the Government of France (''GOF''), and Ugine. We received responses to our questionnaires on December 20, 2001 (EC), and January 8, 2002 (GOF and Ugine). On February 25, 2002, the petitioners, Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, filed comments on the responses received from the GOF and Ugine. We issued a supplemental questionnaire to Ugine on March 5, 2002, and received Ugine's responses on April 2, and April 22, 2002.

Scope of the Review

The products covered by this countervailing duty order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise covered by this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at the following subheadings:

7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

Also excluded from the scope of this order are:

Flapper Valve Steel: Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or

less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Suspension Foil: Suspension foil is a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain Stainless Steel Foil for Automotive Catalytic Converters: This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent Magnet Iron-chromium-cobalt Alloy Stainless Strip: This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[1]

Certain Electrical Resistance Alloy Steel: This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high-temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[2]

Certain Martensitic Precipitation-hardenable Stainless Steel: This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Three Specialty Stainless Steels Typically Used in Certain Industrial Blades and Surgical and Medical Instruments: These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives)[4]. This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[5]

Period of Review

The period of review (''POR'') for which we are measuring subsidies is January 1, 2000, through December 31, 2000.

Attribution of Subsidies

Ugine has filed its response on behalf of Usinor and all of Usinor's affiliates involved in the manufacture, production or exportation of the subject merchandise. These affiliates are: Ugine SA, Imphy Ugine Precision, Ugine France Service, Sollac Mediterrannee, Usinor Packaging, Sollac Lorraine, Sollac Atlantique, CARLAM, G. Fer, IRSID, and Usinor Stainless. Usinor holds a majority interest in all of these companies. Therefore, in accordance with 19 CFR 351.525(b)(6)(iii), we have preliminarily attributed subsidies received by these companies to the total sales by Usinor of French-produced merchandise.

Changes in Ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit (''CAFC'') in *Delverde Srl v. United States*, 202 F.3d 1360, 1365 (Feb. 2, 2000), *reh'g en banc denied*, 2000 U.S. App. LEXIS 15215 (June 20, 2000) (''*Delverde III*''), rejected the Department's change-in-ownership methodology as explained in the *General Issues Appendix*[6]. The CAFC held that ''the Tariff Act, as amended, does not allow Commerce to presume conclusively that the subsidies granted to the former owner of Delverde's

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17''is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,''''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

[6] *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37225 (July 9, 1993).

corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government.'' *Id.* at 1364.

Pursuant to the CAFC's finding, the Department developed a new change-in-ownership methodology, first announced in a remand determination on December 4, 2000. This new methodology was also applied in remand determinations resulting from remand orders in *Allegheny-Ludlum Corp., et al v. United States,* No. 99–09–00566 (''*Allegheny-Ludlum I*'') and *GTS Industries S.A. v. United States*, No. 00–03–00118 (''GTS I''). (*See Final Results of Redetermination Pursuant to Court Remand: Allegheny-Ludlum Corp., et al v. United States,* No. 99–09–00566 (December 20, 2000) and *Final Results of Redetermination Pursuant to Court Remand: GTS Industries S.A. v. United States,* No. 00–03–00118 (December 22, 2000).) In *Allegheny-Ludlum I,* the CAFC was reviewing the final determination which gave rise to the countervailing duty order covered by this review. In both of the cited remand determinations, the Department examined the privatization of Usinor and found that the pre-privatization subsidies continued to benefit subject merchandise exported to the United States after Usinor's privatization.

Ugine argues that in *Allegheny Ludlum Corp. v. United States,* Slip Op. 02–01 (Ct. Int'l Trade Jan. 4, 2002) (''*Allegheny Ludlum II*''), the Court of International Trade (''CIT'') rejected as unlawful the change-in-ownership test applied by the Department in the *Allegheny Ludlum I* remand determination. We note, however, that the CIT has remanded this issue to the Department again in *Allegheny Ludlum II* and that the results of our redetermination have not yet been filed with the CIT. Consequently, the CIT's ruling in *Allegheny Ludlum II* is not final. Thus, we have continued to apply the same change-in-ownership methodology that we employed in the *Allegheny Ludlum I* remand determination in these preliminary results.

The first step under this methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a ''financial contribution'' and a ''benefit'' have been received by the ''person'' under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the ''person'' determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

Usinor's Privatization

Up until the time of Usinor's privatization, Usinor was owned (directly or indirectly) by the GOF. Usinor was privatized beginning in July 1995, when the GOF and Clindus offered the vast majority of their shares in the company for sale. Clindus was a subsidiary of Credit Lyonnais, which at that time was controlled by the GOF. After the privatization and, in particular, by the end of calendar year 1997, 82.28 percent of Usinor's shares were held by private shareholders who could trade them freely. Usinor's employees owned 5.16 percent of Usinor's shares; Clindus, 2.5 percent; and, the GOF, 0.93 percent. The remaining 14.29 percent of Usinor's shares were held by the so-called ''Stable Shareholders.'' According to Usinor's 2000 annual report, the government-owned Electricite de France continues to own 3.6 percent of Usinor's shares.

In analyzing whether the producer of merchandise subject to this investigation is the same business entity as pre-privatization Usinor, we have examined whether Usinor continued the same general business operations, retained production facilities, assets and liabilities, and retained the personnel of the pre-privatization Usinor. Based on our analysis, we have concluded that the privatized Usinor is, for all intents and purposes, the same person as the GOF-owned steel producer of the same name which existed prior to the privatization. Consequently, the subsidies bestowed on Usinor prior to its 1995 privatization are attributable to present-day Usinor and continue to benefit the subject merchandise during the POR.

1. Continuity of General Business Operations

Usinor produced the same products and remained the same corporation at least since the late 1980s. In 1987, Usinor became the holding company for the French steel groups, Usinor and Sacilor (the GOF had majority ownership of both Usinor and Sacilor since 1981). Usinor's principal businesses covered flat products, stainless steel and alloys, and specialty products. In 1994, these three product groups were produced by three subsidiaries: Sollac, Ugine and Aster (respectively). This same structure continued after Usinor's privatization in 1995. Usinor's organizational chart during the period of investigation shows the same three major products being produced by the same three subsidiaries.

In 1994 (prior to the privatization), flat products contributed 55 percent of consolidated sales, while stainless and specialty products contributed 20 and 18 percent, respectively. In the years following privatization (1995 -2000), flat carbon steels continued to contribute 49 - 58 percent of Usinor's consolidated net sales. Sales of stainless and alloy, and specialty steel accounted for 23 - 25 percent, and 19 - 21 percent, respectively, during the years 1995 - 1997. Since then, sales of the stainless, alloy, and specialty steel have been combined in Usinor's annual report and a separate category has been reported for ''processing and distribution.'' The combined sales of stainless, alloy and specialty steel ranged from 21 - 28 percent of Usinor's consolidated net sales over the period 1998 - 2000, while processing and distribution ranged from 6 - 18 percent over the same period. In

1999, Usinor divested itself of its specialty steels business.

We have also examined whether post-privatization Usinor held itself out as the continuation of the previous enterprise (*e.g.*, by retaining the same name). In this instance, Usinor retained its same name and there is no indication that the privatized company held itself out as anything other than a continuation of pre-privatization Usinor.

The continuity of Usinor's business operations is also reflected in Usinor's customer base. Prior to privatization, the automobile industry was a principal purchaser of Usinor's output, accounting for approximately 30 percent of Usinor's sales in 1994. In 1997 and 2000, the automobile industry was still Usinor's major customer (36 percent of Usinor's sales in 1997 and 38 percent in 2000). The construction industry has continued as the second largest purchaser: 26 percent in 1994, 23 percent in 1997, and 15 percent in 2000.

2. Continuity of Production Facilities

Neither product lines nor production capacity changed as a result of the privatization, except those changes that occurred in an ongoing manner in the ordinary course of business. No facilities or production lines were added or eliminated specifically as a result of the sale. As is clear from a comparison of the Prospectus for the 1995 privatization and Usinor's 1997 Annual Report, steel production facilities have remained intact. The company has continued to focus on an ''all steel'' strategy, engaging in all aspects of the steel production process and produces a wide variety of steel products. Finally, Usinor's steel production facilities did not change their physical locations.

3. Continuity of Assets and Liabilities

Usinor was sold intact, with all of its assets and liabilities. While the GOF continued to own a small percentage of Usinor's shares, there is no indication that it retained any of Usinor's assets or liabilities.

4. Retention of Personnel

Usinor's Articles of Incorporation changed as a result of the privatization, and the new Articles of Incorporation specified new procedures for electing the Board of Directors. New directors were elected to the Board under the new procedures. However, Usinor's Chairman and Chief Executive Officer remained the same before and after the privatization. Similarly, Usinor's workforce did not change.

Therefore, based on the facts and our analysis of a variety of relevant factors, once privatized, Usinor continued to operate, for all intents and purposes, as the same person that existed prior to the privatization and, thus, the pre-privatization subsidies continued to benefit Usinor even under private ownership.

Use of Facts Available

Sections 776(a)(2)(A) and (B) of the Act require the use of facts available when an interested party withholds information requested by the Department, or when an interested party fails to provide information required in a timely manner and in the format requested. In selecting from among facts available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party if the Department determines that the party has failed to cooperate to the best of its ability. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping duty investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See* section 776(b) of the Act; *see also*, 19 CFR 351.308(a), (b), and (c).

Sections 782(d) and 782(e) of the Act require the Department to inform a respondent if there are deficiencies in its responses and allow it a reasonable time to correct these deficiencies before the Department applies facts available. Even if the information provided is deficient, if it is usable without undue difficulty, is timely, is verifiable, can serve as a reliable basis for reaching our determination, and if the party has cooperated to the best of its ability in providing responses to the Department's questionnaires, section 782(e) of the Act directs the Department not to decline to consider deficient submissions.

In this proceeding, the GOF did not provide information regarding the specificity of benefits under certain programs included under Investment/Operating Subsidies reported by Usinor. Instead, the GOF responded, ''this question is not readily answerable given the multiplicity of programs involved. The GOF will undertake to provide responsive information at verification.'' *See* GOF Questionnaire Response, dated January 8, 2002, at II–9. Similarly, the GOF was asked to provide this information in the investigation segment of this proceeding and elected not to do so. (*See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France,* 64 FR 30774, 30779 (June 8, 1999) (''*SSSS from France*'').) Thus, the GOF is aware of the specific information needed by the Department and apparently possesses responsive information, but has declined to provide it in response to our questionnaires.

In these circumstances, the Department has no alternative but to apply facts available, pursuant to section 776(a) of the Act. Further, we preliminarily determine that an adverse inference is warranted in applying facts available because the GOF elected not to provide information which it could provide and, hence, has not acted to the best of its ability. We do not believe that verification, if one is conducted, is the appropriate means for gathering this information.

Because the GOF did not provide information about these programs, including the distribution of benefits under the programs, the Department is unable to make specificity findings. Therefore, in applying adverse facts available, we preliminarily determine that these programs are *de facto* specific. (Our analysis of the financial contribution and benefit under these programs is discussed below under ''Investment/Operating Subsidies.'')

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (''AUL'') of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''the IRS Tables''). For stainless steel sheet and strip in coils, the IRS Tables prescribe an AUL of 15 years.

In order to rebut the presumption in favor of the IRS tables, the challenging party must show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry in question, and that the difference between the company-specific or country-wide AUL and the IRS tables is significant. 19 CFR 351.524(d)(2)(i). For this difference to be considered significant, it must be one year or greater. 19 CFR 351.524(d)(2)(ii).

In this proceeding, Usinor has calculated a company-specific AUL of 12 years. We note, however, that the one allocable subsidy received by Usinor and attributed to Ugine, FIS Bonds, has previously been allocated over a company-specific AUL of 14 years. The

14–year AUL was calculated in a remand determination involving the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993) (''*French Certain Steel*'') and was subsequently used to allocate this same subsidy in *SSSS from France* (64 FR at 30778) and *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From France,* 64 FR 73277, 73280 (December 29, 1999) (''*French Plate*''). Because the 14–year AUL was calculated using company-specific information and the information is more contemporaneous with the bestowal of the subsidy in question than the information underlying Usinor's 12–year calculation, we have continued to use the 14–year AUL to allocate the benefits of the FIS bonds in this proceeding.

For non-recurring subsidies to Usinor, we applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total or export, as appropriate) in that year. If the amount of subsidies is less than 0.5 percent of sales, the benefits are allocated to the year of receipt rather than over the AUL period.

Equityworthiness and Creditworthiness

In *French Certain Steel* and *SSSS from France,* we found Usinor to be unequityworthy from 1986 through 1988 and uncreditworthy from 1982 through 1988. No new information has been presented in this review to warrant a reconsideration of these findings. Therefore, based upon these previous findings of unequityworthiness and uncreditworthiness, in this review, we continue to find Usinor unequityworthy and uncreditworthy from 1987 through 1988, the years relevant to this investigation.

Benchmarks for Loans and Discount Rates

As discussed above, we have determined that Usinor was uncreditworthy in 1988, the only year in which it received a countervailable subsidy which is being allocated over time.

In accordance with 19 CFR 351.524(d)(3)(ii), the discount rate for companies considered uncreditworthy is the rate described in 19 CFR 351.505(a)(3)(iii). To calculate that rate, the Department must specify values for four variables: (1) the probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt.

For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa- to C-rated category of companies as published in Moody's Investors Service, ''Historical Default Rates of Corporate Bond Issuers, 1920–1997'' (February 1998). For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds as published in Moody's Investor Services: ''Statistical Tables of Default Rates and Recovery Rates'' (February 1998). For the commercial interest rate charged to creditworthy borrowers, we used the average of the following long-term interest rates: medium-term credit to enterprises, equipment loan rates as published by the OECD, cost of credit rates published in the *Bulletin of Banque de France,* and private sector bond rates as published by the International Monetary Fund. For the term of the debt, we used the AUL period for Usinor, as the equity benefits are being allocated over that period.

To measure the benefit from reimbursable advances received by Usinor, we relied on an average long-term interest rate developed in *SSSS from France* for 1989, and on Usinor's company-specific borrowing rate for 1995.

I. Programs Preliminarily Determined to Be Countervailable

A. FIS Bonds

The 1981 Corrected Finance Law granted Usinor the authority to issue convertible bonds. In 1983, the Fonds d'Intervention Sidérurgique (''FIS''), or steel intervention fund, was created to implement that authority. In 1983, 1984, and 1985, Usinor issued convertible bonds to the FIS, which in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In several previous cases, the Department has treated these conversions of Usinor's FIS bonds into equity as countervailable equity infusions. *See French Certain Steel,* 58 FR at 37307; *French Plate,* 64 FR at 73282; *SSSS from France,* 64 FR at 30779; and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From France,* 58 FR 6221, 6224 (January 27, 1997). These equity infusions were limited to Usinor and were, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act. Also, these equity infusions provided a financial contribution to Usinor within the meaning of section 771(5)(D)(i) of the Act. Finally, because Usinor was unequityworthy at the time of the infusions, we determined that Usinor received a benefit in the amount of the investments.

No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our past findings. Therefore, we determine that a countervailable benefit is being bestowed on the subject merchandise. Because the final year of the benefit stream for the 1986 infusion was 1999, *i.e.*, prior to this POR, we determine that there is no countervailable benefit to the subject merchandise in this POR for the 1986 conversion. Thus, only the 1988 equity infusion continues to provide a benefit in the POR.

We have determined that the 1988 equity infusion should be treated as a non-recurring subsidy pursuant to 19 CFR 351.507(c). Because Usinor was uncreditworthy in 1988 (see section above on ''Subsidies Valuation Information: Equityworthiness and Creditworthiness''), we used an uncreditworthy discount rate to allocate the benefit of the equity infusion.

In French Plate, we attributed separately to Usinor and GTS Industries S.A. their relative portions of the benefits from the equity infusion. 64 FR at 73282. We have continued to do so in this proceeding. We note, however, that the amount attributed to the respective companies differs from the amounts in *French Plate*. This is because of the revisions to the Department's change-in-ownership methodology since the *French Plate* determination.

Dividing the POR benefit attributed to Usinor by Usinor's total sales of French-produced merchandise during the POR, we preliminarily determine Usinor's net subsidy rate for this program to be 1.13 percent ad valorem.

B. Investment/Operating Subsidies

During the period 1987 through the POR, Usinor received a variety of small investment and operating subsidies from various GOF agencies and from the European Coal and Steel Community (''ECSC''). These subsidies were provided to Usinor for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

In *SSSS from France* and *French Plate*, the Department determined that

the funding provided to Usinor by the water boards (*les agences de l'eau*) and certain work/training grants were not countervailable. *See* 64 FR at 30779, 30782; 64 FR at 73282. Consistent with these previous cases, the Department has not included these programs in this review.

For the remaining programs, we preliminarily determine that the investment and operating subsidies provide a financial contribution, as described in section 771(5)(D)(i) of the Act, and a benefit, as described in section 771(5)(E)(i) of the Act. Also, as discussed above under ''Use of Facts Available,'' we preliminarily determine that these investment and operating subsidies are specific within the meaning of section 771(5A)(D) of the Act. Therefore, consistent with *SSSS from France*, 64 FR at 30779, and *French Plate*, 64 FR at 73282, we determine that these investment and operating subsidies are countervailable subsidies.

The investment and operating subsidies provided in years prior to 1999 were already determined to be less than 0.5 percent of Usinor's sales of French-produced merchandise in the relevant year and expensed in the years in which they were received (*see SSSS from France,* 64 FR at 30780, and *French Plate,* 64 FR at 73283). The amount of investment and operating subsidies in 1999 was also less than 0.5 percent of Usinor's sales of French-produced merchandise in 1999. Therefore, this benefit was also expensed in the year of receipt (1999), in accordance with 19 CFR 351.524 (b)(2).

To calculate the benefit received during the POR, we divided the subsidies received by Usinor in the POR by Usinor's total sales of French-produced merchandise during the POR. Accordingly, we preliminarily determine Usinor's net subsidy rate for this program to be 0.16 percent ad valorem.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Loans With Special Characteristics (PACS)

In SSSS from France, we determined that Usinor received a countervailable subsidy as a result of the GOF's 1986 conversions of PACS into common shares of Usinor. Because the final year of the benefit stream for this subsidy was 1999, *i.e.*, prior to this POR, we determine that there is no countervailable benefit to the subject merchandise in the POR.

B. Shareholders' Advances

In *SSSS from France,* we determined that Usinor received a countervailable subsidy as a result of shareholder advances made by the GOF in 1984 - 1986. Because the final year of the benefit streams for these advances was 1999, prior to this POR, we determine that there is no countervailable benefit to the subject merchandise in the POR.

C. Electric Arc Furnace

In *SSSS from France*, we explained that the GOF had agreed to provide Usinor with reimbursable advances to support the company's efforts to increase the efficiency of the melting process, the first stage in steel production. Because the first disbursements were not to be made until 1998, i.e., after the POI in *SSSS from France,* the Department found no benefit during the POI. (*See SSSS from France,* 64 FR at 30780). In *French Plate,* the Department also found no benefit during the POI (1998), because the reimbursable advance was treated as a loan and no payment would be due on the loan until 1999. (*See French Plate,* 64 FR at 73284)

In the instant review, Usinor has reported that it received reimbursable advances under this program in 1998 and 1999, and that the program was phased out in 1999 and 2000. These advances were approved in 1995 and they are to be repaid in 2002 and 2005, respectively.

We divided the total amount approved by the GOF for this project by Usinor's total sales of French-produced merchandise in 1995, the year the reimbursable advances were approved. The result was less than 0.5 percent. Therefore, even if these reimbursable advances were treated as grants, they would be expensed prior to the POR. Alternatively, we have calculated the possible benefit to Usinor if the reimbursable advances were treated as zero-interest long-term loans. The benefit (when rounded to the nearest hundredth) is zero during the POR.

Therefore, we have not analyzed these reimbursable advances further and preliminarily determine that they do not confer a countervailable benefit on the subject merchandise during the POR.

D. Funding for Myosotis Project

In *SSSS from France,* we explained that Usinor received grants and reimbursable advances from the GOF to fund the Myosotis project. We found that the amounts received by Usinor between 1989 and 1993 were properly expensed in the years of receipt and, hence, that there was no countervailable subsidy to the subject merchandise from these grants. We also found that Usinor has received a reimbursable advance from the GOF in support of the Myosotis project in 1997. We viewed the reimbursable advance as a loan and found no countervailable benefit from the 1997 reimbursable advance during the 1997 POI. (*See SSSS from France*, 64 FR at 30780) In *French Plate,* we also found no countervailable benefit from the 1997 reimbursable advance. (*See French Plate,* 64 FR at 73283) In the instant review, Usinor has responded that it received a second reimbursable advance in 1999.

The reimbursable advances provided by the GOF to support the Myosotis project were approved in 1995. The advances were to be repaid in 1999 and 2001, respectively.

We divided the total amount approved by the GOF for this project by Usinor's total sales of French-produced merchandise in 1995, the year the reimbursable advances were approved. The result was less than 0.5 percent. Therefore, even if these reimbursable advances were treated as grants, they would be expensed prior to the POR. Alternatively, we have calculated the possible benefit to Usinor if the reimbursable advances were treated as zero-interest long-term loans. The benefit (when rounded to the nearest hundredth) is zero during the POR.

Therefore, we have not analyzed these reimbursable advances further and preliminarily determine that they do not confer a countervailable benefit on the subject merchandise during the POR.

E. Conditional Advances

In*SSSS from France*, we explained that Usinor received a conditional advance from the GOF in connection with a project aimed at developing a new type of steel used in the production of catalytic converters. Payments were received by Usinor in 1992 and 1995. Repayment of the conditional advance was contingent upon sales of the product resulting from the project exceeding a set amount. In *SSSS from France,* we found that no repayment had been made and we treated the advance as a countervailable short-term, interest-free loan. In this review, Usinor has responded that it repaid a portion of the conditional advance in November 1999, and that the balance remained outstanding in the POR.

Assuming the conditional advance was approved in either 1991 or 1992, we divided the total amount received by Usinor's total sales of French-produced merchandise in each of those years. The result in both instances was less than 0.5 percent. Therefore, even if the

conditional advance were treated as a grant, it would have been expensed prior to the POR. Alternatively, we have calculated the possible benefit to Usinor if the outstanding amount of the conditional advance were treated as a zero-interest long-term loan. The benefit (when rounded to the nearest hundredth) is zero during the POR.

Therefore, we have not analyzed the conditional advance further and preliminarily determine that it does not confer a countervailable benefit on the subject merchandise during the POR.

III. Programs Preliminarily Determined to Be Not Used

Based on the information provided in the responses, we determine that neither Usinor nor its affiliated companies that produce subject merchandise received benefits under the following programs during the POI:

A. ESF Grants

In *SSSS from France* and *French Plate,* we found that certain Usinor companies had received grants under the European Social Fund (''ESF'') for worker training, and that the grants provided countervailable subsidies. Normally, the Department treats benefits from worker training programs to be recurring (see 19 CFR 351.524(c)(1)). However, we have found in several cases that ESF grants relate to specific, individual projects that require separate approval and, hence, should be treated as non-recurring grants. *See, e.g., SSSS from France,* 64 FR at 30781.

Because ESF grants are non-recurring subsidies and potentially allocable over time, we reviewed *SSSS from France* and *French Plate* regarding past disbursements to Usinor under this program. In *SSSS from France,* we determined that ESF grants received in 1995 and 1997 were less than 0.5 percent of Ugine's sales in those years. Hence, the benefits of those ESF grants were expensed in the years of receipt. *See SSSS from France,* 64 FR at 30781. In *French Plate,* an ESF grant received in 1998 by CLI, an Usinor subsidiary, was also expensed in the year of receipt.

In this review, Usinor has stated that any ESF grants received by the Usinor companies in 1999 would be included among the investment and operating subsidies reported in Usinor's financial statement. Because we find, for 1999, that these subsidies were less than 0.5 percent of Usinor's total sales of French-produced merchandise in 1999, any benefits in 1999 would have been expensed in 1999.

Therefore, we determine that ESF grants received by Usinor and it affiliates prior to the POR do not confer a countervailable benefit on the subject merchandise during the POR. Moreover, Usinor has responded that it did not receive any ESF grants during the POR.

B. Export Financing under Natexis Banque Programs

C. DATAR Regional Development Grants (PATs)

D. DATAR 50 Percent Taxing Scheme

E. DATAR Tax Exemption for Industrial Expansion

F. DATAR Tax Credit for Companies Located in Special Investment Zone

G. DATAR Tax Credits for Research

H. GOF Guarantees

I. Long-term Loans from CFDI

J. Resider I and II Programs

K. Youthstart

L. ECSC Article 54 Loans

M. ECSC Article 56(2)(b) Redeployment/Readaptation Aid

N. ERDF Grants

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for Ugine. For the period January 1, 2000, through December 31, 2000, we preliminarily determine Ugine's net subsidy rate to be 1.29 percent. The calculations will be disclosed to the interested parties in accordance with section 351.224(b) of the regulations.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service (''Customs'') to collect cash deposits of estimated countervailing duties at the rate of 1.29 percent on the f.o.b. value of all shipments of the subject merchandise from Ugine that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For companies that were not named in our notice initiating this administrative review, we will instruct Customs to collect cash deposits of estimated countervailing duties at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea.* These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

While the countervailing duty deposit rate for Ugine may change as a result of this administrative review, we have been enjoined from liquidating any entries of the subject merchandise after August 6, 1999. Consequently, we do not intend to issue liquidation instructions for these entries until such time as the injunction, issued on December 22, 1999, is lifted.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. 19 CFR 351.509(c). Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. 19 CFR 351.310(c).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

DATED: May 3, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11768 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 970424097–1069–06]

RIN 0625–ZA05

Market Development Cooperator Program

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of funding availability.

SUMMARY: The International Trade Administration (ITA) of the U.S. Department of Commerce (the Department) requests that eligible organizations submit proposals (applications) for the fiscal year (FY) 2002 competition for Market Development Cooperator Program (MDCP) awards. ITA creates economic opportunity for U.S. workers and firms by promoting international trade, opening foreign markets, ensuring compliance with U.S. trade laws and agreements, and supporting U.S. commercial interests at home and abroad.

Through MDCP cooperative agreements the Department works with export multiplier organizations providing technical and financial assistance which these organizations match. Export multiplier organizations compete for a limited number of MDCP awards.

Eligible export multipliers include trade associations, state economic development/trade departments, small business development centers, World Trade Centers, chambers of commerce, and other non-profit industry organizations. These export multipliers are particularly effective in reaching small- and medium-size enterprises (SMEs). MDCP awards help to underwrite the start-up costs of new export ventures which export multipliers are often reluctant to undertake without Federal Government support. MDCP aims to develop, maintain and expand foreign markets for non-agricultural goods and services produced in the United States and serves to:

- Challenge the private sector to think strategically about foreign markets;
- Spur private-sector innovation and investment in exporting; and
- Increase the number of U.S. companies, particularly SMEs, taking decisive export actions.

As an active partner, ITA will, as appropriate, guide and assist export multipliers in achieving project objectives. ITA encourages export multipliers to propose projects that (1) best meet their industry's market development needs; and (2) leverage the partnership between the export multiplier and ITA.

DATES: *Public Meeting:* The Department will hold a public meeting to discuss MDCP proposal preparation, procedures, and selection process on Monday, May 20, 2002. The two-hour meeting will begin at 10 a.m. in Room 6057, at the Herbert Clark Hoover Building, 14th and Constitution Avenue, NW., Washington, DC. The Department will not discuss specific proposals at this meeting. Attendance is not required.

Applications: The Department must receive completed applications by 5 p.m. Eastern Daylight Time, Monday, July 1, 2002. Late applications will not be accepted. They will be returned to the sender. Applicants must ensure that the service they use to deliver their application can do so by the deadline. Due to recent security concerns, packages sent to the Department via U.S. mail have been delayed several days or even weeks.

As set forth under *IV.B.2. Number of Copies,* ITA requests one original application, plus seven (7) copies. Applicants for whom this is a financial hardship should submit an original and two copies. Applications should be submitted to the contact below.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Hess, Manager, Market Development Cooperator Program, Trade Development, ITA, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 3215, Washington, DC 20230.

Email: *Brad_Hess@ita.doc.gov.*

Phone/Fax: (202) 482–2969/–4462.

Internet: *http://www.export.gov/mdcp.*

Application Kit: A kit which includes required application forms is available at *www.export.gov/mdcp.* A ''hard-copy'' version is available upon request.

Pre-Application Counseling: Applicants with questions should contact the Department as soon as possible, while continuing to prepare their proposals. The Department will not extend the deadline for submitting applications.

From May 10, 2002, until June 10, 2002, the Department does not counsel potential applicants regarding the merits of projects they may propose in their applications. During this competition period, the Department may respond to potential applicants' questions regarding eligibility, technical issues, procedures, general information, and referral.[1] For example, during the competition period the Department may refer a potential applicant to sources for market research on a foreign market identified by the potential applicant. However, to continue the example, the Department may not comment on the merits of including that market in a proposal, or suggest an alternative market.

SUPPLEMENTARY INFORMATION: *Authority:* The Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, Title II, sec. 2303, 102 Stat. 1342, 15 U.S.C. 4723 and Pub. L. 107–38.[2]

Catalog of Federal Domestic Assistance (CFDA): No. 11.112, Market Development Cooperator Program.

I. Definitions of Terms

Several definitions are provided below to assist readers in preparing MDCP applications. These definitions do not supplant or supercede definitions provided in the Department's Grants and Cooperative Agreements Interim Manual (February 2002).

A. Definition of Frequently Used Terms

Several terms used throughout this request for applications have specific meanings that may not be evident. These are defined below.

1. Award period: Federal funds may be expended over the period of time required to complete the scope of work, but not to exceed three years from the start date of the award. The award period may be extended. Extensions usually do not exceed 12 months.

2. Commercial Service: Formally known as the U.S. and Foreign Commercial Service (US&FCS), the Commercial Service, one of ITA's major program areas, is statutorily mandated to promote exports of goods and services from the United States, particularly by SMEs, and to protect U.S. business interests abroad. It is composed of three main units. Two of these encompass entities whose staff work with or on practically every MDCP project team, namely, the domestic U.S. Export Assistance Centers (USEACs) and the overseas Commercial Service offices.

3. Cooperative agreement: The legal financial assistance instrument used for MDCP awards. Unlike a grant, a cooperative agreement reflects a relationship between a cooperator and the Department characterized by substantial Department involvement including collaboration and participation. See *II.B. Administration of Award Activity* below for additional information about the Department's involvement.

4. Cooperator: An export multiplier (see definition below) that wins an MDCP financial assistance award in ITA's annual competition. A cooperator is a ''recipient'' (see definition below) of Federal financial assistance. Cooperator

[1] Outside of the competition period, the Department is free to counsel potential applicants on the merits of their proposed projects.

[2] Unless otherwise noted, all legal authorities cited in this notice may be accessed via the Internet at *http://www.access.gpo.gov/* or at *http://wwwsecure.law.cornell.edu/federal/.*

status is valid only for the term of the MDCP award period.

5. Cooperator event: An export promotion or market development activity undertaken as part of an MDCP project such as a trade mission, a trade show, a technical seminar, or opening a foreign office. Other examples include, but are not limited to, those listed below in *II.A. Examples of Project Activity.*

6. Current or Past Cooperator: Organization that currently has or in the past has had an MDCP project.

7. Domestic Commercial Service office: A U.S. Export Assistance Center.

8. Export multiplier: A trade association, state department of trade, and other non-profit that does not export, but helps companies to export. (See *III. Eligibility* below.)

9. Fiscal year: The fiscal year of the Federal Government. The twelve month period from October 1 through September 30.

10. Overseas Commercial Service office: A Commercial Service unit whose employees are based in U.S. embassies, consulates, or other locations abroad.

11. Industry: The U.S. potential exporters that an applicant's project is designed to benefit. The target group can be very broad or quite specific. For one applicant, for example, ''industry'' may mean all U.S. producers of tennis equipment and services, for another only California tennis equipment producers. For another applicant, industry might mean all California companies.

12. Market Access and Compliance (MAC): One of ITA's major program areas dealing with trade negotiations, compliance with trade agreements, and trade policy. MAC professionals often serve on project teams.

13. Office of Planning, Coordination and Management (OPCM): The Trade Development (TD) office that administers the MDCP.

14. Produced in the United States: Having substantial inputs of materials and labor originating in the United States, such inputs constituting over 50 percent of the value of the good or service to be exported.[3]

15. Product: A U.S. non-agricultural good or service.

16. Project: A series of activities proposed in an MDCP application—or, after an MDCP award is made, in an amendment request—and approved by the Department which occurs during the award period.

17. Project Team Leader: A Trade Development employee who coordinates MDCP project activity with a cooperator and serves as the cooperator's primary point of contact with ITA. (See *II. B.1. Project Team* below.)

18. Recipient: A cooperator. The organization that receives an MDCP award.

19. Request for Applications (RFA): **Federal Register** notice announcing the availability of MDCP financial assistance funds.

20. Trade Development (TD): One of ITA's major program areas that looks at all aspects of exporting from an industry perspective. Most Project Team Leaders are TD industry specialists. TD's Assistant Secretary makes the final selection of MDCP award winners.

21. U.S. Export Assistance Center (USEAC): A domestic Commercial Service office. USEACs are located across the United States.

22. U.S. product: See *Product* and *Produced in the United States* above.

B. Other Definitions

Some terms are best understood in the context of a more detailed discussion. For terms that do not appear above, refer to the RFA section where the term is discussed.

II. Program Description

The goal of the MDCP as set out in authorizing legislation is to develop, maintain, and expand foreign markets for non-agricultural goods and services produced in the United States. Non-agricultural goods and service means goods and services other than agricultural products as defined in 7 U.S.C. 451.[4]

A. Examples of Project Activity

Applicants should propose activities appropriate to the market development needs of the relevant U.S. industry. Examples from prior years are set forth below.[5] These are provided only for illustration. Applicants are not required to propose any of these activities:

1. Foreign trade show/trade mission participation;

2. Demonstration of U.S. products abroad;

3. Export seminars;

4. Establishment of technical servicing abroad;

5. Joint promotion of U.S. products with foreign partners;

6. Establishment of an overseas office[6];

7. Detail of a representative to a Commercial Service office in accordance with 15 U.S.C. 4723(c);

8. After-sale service training of foreign nationals;

9. Promotion of standards that ensure market access for U.S. products; and

10. Publication of product or company directory.

B. Administration of Award Activity

1. Project Team: To administer each cooperative agreement, a project team is established including key personnel from the cooperator and ITA officials who can help the cooperator achieve MDCP project objectives.[7] Each project team acts as the project's ''board of directors'' establishing direction, recommending changes when necessary, and working on project activities.

2. Annual Operating Plan: Each year during the award period, the project team formulates an operating plan based on the work plan submitted in the application. The plan identifies project events, projected dates, team responsibilities, and a rough cost estimate for each event and ongoing activity scheduled during the fiscal year (October through September).[8] Applicants do not submit annual operating plans in their applications. They are developed only after receipt of an award and designation of the project team.[9]

3. Regular Team Meetings: Project teams normally meet in-person at least every three months. In between the quarterly meetings, project teams usually hold regular telephone or video conferences. Cooperators based in the Washington, DC area usually meet in-person more often than quarterly.[10]

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[3] ''Trade Mission Application Form'' ITA Form 4008P–1 (Rev. 8/97) available from *http://www.ita.doc.gov/ooms/forms.htm.*

[4] This definition includes ''agricultural, horticultural, viticultural, and dairy products, livestock and the products thereof, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed manufactured products thereof * * *''

[5] Visit *www.export.gov/mdcp* for a description of each of the MDCP projects funded to date.

[6] Such an office should not duplicate the programs or services of the Commercial Service office(s) in the region, but could include co-location with a Commercial Center of the Commercial Service.

[7] If needed, representatives from other Federal agencies may be invited to participate on the project team.

[8] Some of the planning by ITA team members is affected by the Federal fiscal year. Cooperators should anticipate finalizing their annual operating plans well before October 1.

[9] The annual operating plan is a blueprint for team activity worked out between the cooperator and the Project Team Leader. For example, one activity listed could be a trade mission. In addition to dates and responsibility, the cooperator would list its estimated costs based on the project budget submitted in the application, as amended. In a separate column, ITA's Project Team Leader estimates the amount of ITA administrative funds needed to pay for ITA travel supporting the mission. (Funding of ITA team members' participation is subject to availability of funds.)

[10] Project Team Leaders usually request and receive sufficient ITA administrative funds to pay

C. Funding

1. Funding Availability: For FY 2002, the total funds expected to be available for this program are $2.0 million. The Department expects to conclude a minimum of five (5) cooperative agreements. No award will exceed $400,000, regardless of the duration of the award period.

2. Match Requirement: A cooperator must contribute at least two dollars for each Federal dollar received.

a. *Cash Contribution:* A cash contribution is a new outlay of cooperator funds for project activity. The cooperator can only use its funds—not the funds of a partner or any other entity—as cash contribution.[11] An in-kind contribution is not part of the cash contribution.

(1) One Dollar of Match Must Be Cash: One dollar of a cooperator's minimum two-dollar match must be cash contribution. The other dollar of match may be either in-kind contribution or cash contribution.

(2) Program Income: Project fees generated under the award, like any other source of program income, must be used for project-related purposes during the award period. Applicants should explain any such fees.

(a) Project Benefits and Reasonable Fees: Benefits from the project must be made available to all companies in the industry whether or not a company is a member or constituent of the cooperator or its partner(s). In some situations, a cooperator may charge lower fees to one class of companies than to another. For example, a trade association could charge a lower participation fee to a member company than it does to a nonmember. This is permitted as long as the difference in fees is reasonable.

(b) Cash Match If Value Added: Program income expended on project activity may be counted as cash match, if it represents value added by the cooperator for project activity. This can be illustrated in the example of a company that attends a trade show as part of a cooperator's project. If the company negotiates amounts for its own arrangements with vendors, pays the total amount to the cooperator, then has the cooperator pay the amount to the vendors, the cooperator has added no value. The cooperator cannot claim the fees as cash match.

The same cooperator could claim fees paid by the company for trade show participation, if the cooperator adds value and the fees represent something of value that furthers project goals. For example, the cooperator could create its own trade-show participation package. This might include finding optimal hotel accommodations, securing group airfare, meeting with trade show organizers before the show, and organizing a reception to take place during the show. Such a cooperator package would help determine project success. When companies pay the fees for such a package, they are doing more than getting themselves to a trade show, they are agreeing that the project itself has value. Because the cooperator's package adds value and furthers project goals, the cooperator could charge fees, use the fees to pay project expenses, and claim them as cash match.

(3) Third Party Contributions: In order for a cooperator to outlay cash contributed by a third party, the third party must transfer the funds to the cooperator. Otherwise, expenditures for goods and services contributed by a third party are considered to be in-kind contributions.

b. In-Kind Contribution: An in-kind contribution is a match other than a cash contribution. Examples include the value of staff time of a partner organization, airfare donated by a U.S. airline, and cash paid by partner organizations for project expenses.

Applicants can claim only the fair market value of the in-kind contribution.[12] In proposed budgets, applicants should list all in-kind contributions separately from cash contributions. Applicants must describe these in-kind contributions in sufficient detail to determine that the requirements of 15 CFR 14.23(a), or 15 CFR 24.24 (a) and (b) are met.

Applicants should structure their budgets carefully when expenditures by companies that benefit from project activity are involved. An expenditure by such a company that primarily benefits only that company cannot be claimed as in-kind match.

For example, a company may have made and paid for its own arrangements to attend a trade show that a cooperator has included in its project. The cooperator could not claim the amount paid by the company as in-kind match. The company incurs airfare and other expenses for its own benefit, but not necessarily to accomplish project objectives. Such expenditures are more self-serving than are true in-kind contributions to project success.

This policy should not deter applicants from proposing in-kind match. For example, a cooperator can claim the value of airfare donated by a U.S. airline. Although the airline benefits from goodwill associated with donating the service, it is the cooperator's project that benefits directly when the airfare is used to achieve project objectives. Unlike the company in the example above, the airline does not use the donated airfare itself and thereby benefit directly from it.

c. Minimum Match: An example of the minimum match is set forth below. An applicant requesting $200,000 of Federal funds must supply, at a minimum, $200,000 of cash contribution. As illustrated below, the remaining $200,000 of the required match can be made up of additional cash or in-kind contributions.

Item	Federal share	Cooperator match
Cash	200,000	200,000
Cash or In-kind	.....	200,000
Total	200,000	400,000

d. Cost Share Ratio: The example above establishes a cost-share ratio of two-to-one: two cooperator dollars for each Federal dollar. The cooperator assumes ⅔ of the total cost. In other words, 67 percent of the funding is provided by the cooperator and 33 percent by the Federal Government. This means that the cooperator will receive one dollar for every three dollars in project expenditures.

e. Additional Match: Cooperators may contribute more than two dollars for each Federal dollar; however, as set forth below, this will increase the cost-share ratio.

Item	Federal share	Cooperator match
Cash	200,000	200,000
Cash or In-kind	.....	400,000
Total	200,000	600,000

This example establishes a cost-share ratio of three-to-one: three cooperator dollars for each dollar of Federal funds. The cooperator assumes 3/4 of the total cost. In other words, 75 percent of the funding is provided by the recipient and 25 percent by the Federal Government.

for travel to the cooperator's location for team meetings. Most cooperators make provision in their project budgets to travel to Washington, DC for some of the team meetings in order to familiarize themselves with all of the Federal resources available to them.

[11] Recipient cash contributions are defined in 15 CFR part 14, § 14.2(g) as the award ''recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.''

[12] For example, a consultant cannot claim $150 per hour for their donated services unless they can demonstrate that they are actually paid that rate by customers for similar work.

This means that the cooperator will receive one dollar for every four dollars in project expenditures.

f. Direct and Indirect Costs: Applicants may claim indirect costs in their project budgets.[13] Generally, direct costs result directly from project activity and usually include expenses such as personnel, fringe benefits, travel, equipment, supplies and contractual obligations. By contrast, indirect costs are generally those costs that are incurred regardless of whether there is an MDCP project. These are often referred to as ''overhead'' and usually include expenses such as rent, electricity, and gas.

The Department will determine allowable costs on the basis of the applicable cost principles and definitions in OMB Circulars A–21, A–87, and A–122; in 45 CFR part 74, appendix E; and in 48 CFR part 31.[14]

Federal funds may be used only to cover direct costs. The applicant must incur and pay direct costs that equal or exceed the amount of Federal funds. However, any portion of the balance of applicant's match that does not exceed the levels set forth below in *II.B.3. Indirect Cost Rate,* may be used to cover indirect costs.

3. Indirect Cost Rate: If a cooperator does not have a current approved indirect cost rate from another Federal agency, and the Department of Commerce will be the largest funding Federal agency, the Department will work with a cooperator to establish an indirect cost rate. This will not happen until after the applicant has been announced as an MDCP award winner.

Indirect costs are capped by the lesser of the cooperator's total direct costs or the indirect cost rate whichever is less.[15] Examples of the two caps are set forth below.

a. Capped by Indirect Cost Rate: In the example below, indirect expenses are limited by the indirect cost rate of 30 percent of direct costs (461,538 × 0.3 = 138,462). This amount is lower than the other possible cap of $261,538, the total cooperator contribution to direct expenses. Accordingly, the cap is the lower amount, $138,462.

Cost	Federal share	Cooperator match
Direct	200,000	261,538
Indirect (30%)	.....	138,462
Total	200,000	400,000

b. Capped by Cooperator Direct Costs: In the example below, indirect expenses are limited by the cooperator's level of contribution to direct expenses instead of the amount calculated with the indirect cost rate. The indirect cost rate of 60 percent of total direct costs yields $240,000 of total indirect costs (400,000 × 0.6 = 240,000). Because this amount exceeds the cooperator's contribution of direct costs of $200,000, indirect costs are capped at $200,000.

Cost	Federal share	Cooperator match
Direct	200,000	200,000
Indirect (60%) (capped)	.....	200,000
Total	200,000	400,000

4. Approved Pre-Award-Period Expenditure: As a general matter, cooperators can request reimbursements only for project costs incurred during the award period. However, if proposed in the application, cooperators may expend project funds to attend a cooperator orientation meeting, even if it precedes the beginning of the award period. See *Summary: Dates: Public Meeting* above.[16]

5. Fees for Some Government Services: The Commercial Service participates on each MDCP project team. Applicants should understand that the Commercial Service is required to charge fees to cover costs for many of the services it provides. The policy set forth below applies to Commercial Service resources that are provided as part of the cooperative agreements.

The Commercial Service will provide, as part of the cooperative agreements, a limited amount of reasonable assistance to MDCP cooperators at no charge. The policy set forth below applies to Commercial Service resources that are provided as part of the cooperative agreements.

For assistance that goes beyond the ''limited amount of reasonable assistance'' as defined below, applicants should make provision in their budgets. To determine the cost for services provided by the Commercial Service, applicants should contact the USEACs or overseas Commercial Service offices. These may be identified at *www.export.gov/commercialservice.*

There may be situations that prevent the Commercial Service from providing no-charge services to cooperators. Perhaps the most common example is another event to which the Commercial Service office has already committed its resources.

The definitions below will guide the domestic or overseas Commercial Service offices in implementing this policy.

a. Overseas Commercial Service Offices:

(1) Limited amount: Cost-free assistance will not exceed two days' Commercial Service effort per cooperator, per country, per year. Direct costs and specially-prepared market research are not included in the cost-free assistance.

(2) No charge: No fees are collected. The term applies only to indirect costs such as time expended by Commercial Service employees. Cooperators should always expect to pay direct costs, such as hiring an interpreter or transportation.

(3) Reasonable assistance: This includes appointment making, temporary use of Commercial Service office space, when available, making hotel arrangements, briefing on market conditions, help organizing seminars/conferences, and other similar services worked out between the Project Team Leader and the Commercial Service office.

b. U.S. Export Assistance Centers (USEACs):

USEACs can generally implement the policy as a no-charge extension of normal client support. Most USEAC service to cooperators is provided as part of long-term relationships developed in local exporting communities throughout the United States.

III. Eligibility

A. Definition of Eligible Entity

U.S. trade associations, non-profit industry organizations, and state departments of trade and their regional associations are eligible to apply for an MDCP award. In cases where no entity described above represents the industry, private industry firms or groups of firms, may be eligible to apply for an MDCP award. Such private industry firms or groups of firms must provide in their application, documentation demonstrating that no entity in the first three categories listed below represents their industry.

[13] A sample calculation of indirect costs is provided in the mock application available at *www.export.gov/mdcp.*

[14] Access OMB circulars and forms at *http://www.whitehouse.gov/omb/grants/index.html.* Appendix E referred to on this OMB site is not listed separately. It is found at the end of 45 CFR 74.91, which may be accessed directly at *http://www.access.gpo.gov/nara/cfr/waisidx_99/45cfr74_99.html.*

[15] Information on calculating an indirect cost rate is available at *http://www2.dol.gov/dol/oasam/public/programs/guide.htm.*

[16] This expenditure is limited to allowable expenses (e.g., air fare and lodging) associated with attending the orientation.

1. Trade Association: A fee-based organization consisting of member firms in the same industry, or in related industries, or which share common commercial concerns. The purpose of the trade association is to further the commercial interests of its members through the exchange of information, legislative activities, and the like.

2. Non-Profit Industry Organization:

a. A non-profit small business development center operating under agreement with the Small Business Administration; or

b. A non-profit World Trade Center chartered or recognized by the non-profit World Trade Centers Association; [17] or

c. An organization granted status as a non-profit organization under Title 26 U.S.C. 501(c)(3), (4), (5), or (6) which operates as one of the following:

(1) Chamber of commerce,

(2) Board of trade,

(3) Business, export or trade council/interest group,

(4) Visitors bureau or tourism promotion group,

(5) Economic development group,

(6) Small business development center, or

(7) Port authority.

3. State Departments of Trade and Their Regional Associations:

a. Department of a state government tasked with promoting trade, tourism, or other types of economic development; or

b. Associations of the departments of trade (as defined above) of two or more states; or

c. Entities within a state or within a region that are associated with a state department of trade, tourism, or other types of economic development including non-profit, non-private, non-commercial entities which are at least partially funded by, directed by, or tasked by a state government to promote trade, tourism, or other types of economic development.

4. Special Note Regarding Educational Institutions: Educational institutions, such as schools, colleges, and universities, are generally not eligible. However, organizations that are part of an educational institution for administrative, financial, legal, or logistical reasons, and are not independent legal entities—for example, an organization which is not incorporated—which otherwise may be classified above under *1. Trade Association,* 2. *Non-Profit Industry Association,* or 3. *State Departments of Trade and Their Regional Associations,* above are eligible.

In such a case, the eligible entity will include in its application a signed letter stating that MDCP funds will be used only by the eligible entity for the purposes outlined in its application, and that no such funds will be used by or retained by the educational institution, even though the funds may need to go through the educational institution because of the eligible entity's lack of a separate accounting system or lack of status as a separate legal entity.

B. Eligibility of Current or Past Cooperators

MDCP aims to increase export market development activities by using program funds to encourage new initiatives. MDCP funds are not intended to replace funds from other sources, nor are they intended to replace MDCP funding from a previous award. Current or past cooperators may propose a new project. *See V.A.4. Creativity and Capacity* below.

C. Determination of Eligibility

1. Request for Determination: Prospective applicants are encouraged to resolve questions regarding eligibility by requesting an eligibility determination in writing accompanied by the most current version of all of the following documents that apply:

a. Articles of incorporation,

b. Charter,

c. Bylaws,

d. Information on types of members and membership fees,

e. Internal Revenue Service acknowledgment of non-profit status,

f. Annual report,

g. Audited financial statements,

h. Documentation of ties to state trade departments or their regional associations, and

i. The letter described in *III.A.4. Special Note Regarding Educational Institutions* above.

Prospective applicants should submit eligibility determination requests as soon as possible, if they wish to have determinations prior to the application deadline. This deadline will not be extended, and applicants should continue to work on applications while awaiting the Department's eligibility determination.

2. *Joint Ventures:* Entities may join together to submit an application as a joint venture; however, only one eligible organization can be the designated cooperator. For example, two trade associations may pool their resources and submit one application, but only one may be designated the cooperator. Foreign businesses and private groups also may join with eligible U.S. organizations to submit applications and to share project costs.

IV. Applications

A. Format

The basic elements of the application are set forth below. Additional instructions and required forms are provided in the application kit available from *www.export.gov/mdcp.*

1. Executive Summary: In accordance with *V.B. Evaluation and Selection Procedures* below, the Department will distribute applicants' one-page summaries to its experts to solicit comments. This summary should communicate the essence of the application proposal including the following:

a. Applicant's name and location,

b. Name of partnership organizations joining applicant,

c. ITA entities and other Federal offices with which applicant envisions working,

d. Amount of Federal funds requested,

e. Total project budget,

f. Proposed award period,

g. Foreign markets targeted,

h. U.S. industry to be promoted, and

i. Brief description of the project activities and methods.

2. Background Research: Developing a project plan requires solid background research. Applications should reflect the findings of the applicant's study of the following:

a. Market potential of the U.S. products,

b. Competition from host-country and third-country suppliers,

c. Economic situation and the ability of a country to import the U.S. products,

d. Industry resources that can be brought to bear on developing a market,

e. Industry's ability to meet potential market demand, and

f. Industry's after-sales service capability in designated foreign market(s).

3. Project Description: After describing their completed basic research, applicants should develop marketing plans that set forth project objectives and the specific activities applicants will undertake.

a. Work Plan: The project description should include a list of specific activities planned, including: (1) The different phases of the project, identifying each milestone and activity in chronological order; (2) the location where activities will take place; and (3) the ways the applicant intends to involve ITA as a partner in project activities.

[17] A description of the World Trade Centers Association is available on the Internet at *http://www.wtca.org.*

b. Performance Measures:

(1) Applicant-Designed Performance Measures: Applicants should develop and utilize performance measures which reasonably gauge project success.

(2) ITA Performance Measures: ITA reports results using the Government Performance and Results Act (GPRA) measures defined for its programs and activities.[18] All cooperators will report quarterly on the GPRA measures listed below. Because they are not defined by the cooperator, ITA recognizes that some GPRA measures may be more applicable to some projects than to others. However, cooperators should be prepared to record the effect of MDCP project activity on as many of the performance measures below as possible.

(a) How does MDCP project activity increase:

(i) Awareness and understanding of ITA products and services,

(ii) Satisfaction with the quality of ITA products and services,

(iii) Ease of use of ITA's Internet portal, and

(iv) Ease of access to ITA export and trade information and data,

(b) Number of deals [19] executed by U.S. businesses,

(c) Dollar value of exports of U.S. businesses resulting from participation in MDCP project activities,

(d) Number of U.S. businesses that are new to export,[20]

(e) Number of U.S. businesses that are new to market,[21]

(f) Brief description of each partnership [22] between ITA and a public or private entity that is established or enhanced, and

(g) Number of export activities undertaken by U.S. businesses. (See examples below in *V.A.1. Export Success Potential.*)

(3) Performance Measure Reporting Requirements: Each cooperator should report on both applicant-designed measures and ITA performance measures in its quarterly reports.

(4) Performance Measure Recording and Reporting System: Each applicant should describe its recording and reporting system in its proposal. Ultimately, it is the success of individual companies that determines the project's export success. Therefore, applicants should demonstrate how they plan to ensure that participant companies, and any other sources of export success information, will report to it anecdotes and other performance measurement information.

c. Partnership: Applications should display the imagination and innovation of the private sector working in partnership with the government to obtain the maximum market development impact. As noted under *II.B.1. Project Team* above, each cooperator will work with a Project Team Leader and other ITA team members. Team members from other Federal agencies also may be invited to participate. Applicants must describe in detail all assistance expected from ITA or other Federal agencies.

d. Project Funding Priorities: Project proposals must be compatible with U.S. trade and commercial policy. In addition, applicants are encouraged to address the priorities set forth below. An application does not need to focus on a specific number of these priorities to qualify for an award. It is conceivable that an applicant could do a superb job focusing on only one of the priorities and receive an award.

The international trade priorities listed below are the priorities referred to in *V.A.3. Partnership and Priorities.* The Department is interested in receiving proposals that include projects that:

(1) Promote an industry particularly well suited to foreign market development including information technology, telecommunications, energy, environmental technology, tourism, services, and healthcare;

(2) Increase trade opportunities by opening markets through the development of new trade agreements, the support of World Trade Organization negotiations, the removal of non-tariff barriers, or the development of commercial infrastructure in emerging economies;

(3) Increase overall export awareness and awareness of ITA programs and services among U.S. companies, by making SMEs export-ready or by facilitating deal-making;

(4) Ensure compliance with trade agreements;

(5) Support the Administration's broader foreign policy objectives through trade-related initiatives;

(6) Promote the use of e-commerce as a low-cost, low-risk tool to help SMEs to export;

(7) Increase ''hands-on'' export education designed for SMEs through:

(a) Developing educational tools such as curricula and media, and/or

(b) Providing company-specific assistance; and

(8) Develop non-traditional approaches to creating demand for the products/services developed from new U.S. technologies.

4. Credentials: Each cooperator must ensure adequate development, supervision, and execution of project activities for itself and for each non-Federal partner with significant involvement in the project. Therefore, for itself and each such partner, each applicant must:

a. Address its ability to provide a competent, experienced staff and other resources;

b. Describe its structure and composition;

c. Discuss the degree to which it represents the industry in question;

d. Describe the role, if any, foreign membership plays in its affairs;

e. Summarize the recent history of its industry's international competitiveness;

f. Provide a resume for the project director and professional personnel; and

g. Project the amount of time each professional will devote to the project.

5. Finance and Budget: Applicants must provide a detailed budget for the project including the elements listed below:

a. Form 424A ''Budget Information—Non-Construction Programs'';

b. Budget for Project Award Period;

c. Supporting worksheets and explanations; [23]

d. A discussion of financial systems and projections of how, when, and from what sources the matching funds will be or have been raised;

e. A summary of all financial assistance awards received in excess of $20,000 over the last five years. This should include the award reference number, contact name, title, organization, email (if available), fax, and mailing address;

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[18] GPRA was enacted August 3, 1993 (Pub. L. 103–62).

[19] A ''deal'' is an action facilitated by the cooperator or its partners, including ITA, for U.S. exporters. Deals include the following types of export transactions: shipping goods or delivering services, signing an agent/distributor, identifying an agent/distributor, signing a contract with sales expected in the future, helping a U.S. firm avoid harm or loss, and helping resolve a trade dispute.

[20] A ''new-to-export'' firm is a U.S. firm that transacts an actual, verifiable export shipment of goods or delivery of services for the first time in the last 24 months, and where any prior exports resulted from unsolicited orders or were received through a U.S.-based intermediary.

[21] A ''new-to-market'' firm is a U.S. firm that transacts an actual, verifiable export shipment of goods or delivery of services to a market for the first time in the last 24 months, and where any prior exports to the market resulted from unsolicited orders or were received through a U.S.-based intermediary.

[22] A ''partnership'' is a new or enhanced relationship codified in writing through a memorandum/letter of understanding/agreement, reimbursable agreement, grant, cooperative agreement, or contract.

[23] An example of how to generate Form 424A, the Budget for Project Award Period, and supporting worksheets and explanations is included in the Mock Application at *www.export.gov/mdcp.* Applicants are welcome to copy the spreadsheet file used for the Mock Application Budget and use it for their own applications.

f. The most recent audited financial statements. If the applicant is a sub-unit of an audited entity, in addition to the financial statements of the audited entity, the applicant should provide financial statements at the most specific level available, whether or not these are audited. If the applicant's most recent financial statements are not audited, it should submit the most recent unaudited financial statements and a statement indicating whether it currently has an auditor and when it plans to issue audited financial statements; and

g. Any additional evidence of financial responsibility.

6. Forms: In addition to the budget forms identified above, each application must include the following completed forms:

a. SF–424 Application for Federal Assistance,

b. SF–424B Assurances—Non-Construction Programs,

c. CD–346 Applicant for Funding Assistance, and

d. CD–511 Certifications Regarding Debarment, Suspension, and Other Responsibility Matters.

In addition, applicants may determine that they need to complete forms CD–512 ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and/or form SF–LLL ''Disclosure of Lobbying Activities''. These are available at *www.export.gov/mdcp* as part of the application kit, which includes explanations of the forms.

7. Appendices: Appendices should be tabbed or otherwise marked for easy reference. Applicants should include in their appendices, whatever material supports the main body of the application *(IV.A.1–4),* including the types of appendices listed below.

a. The portion of the application defined above in *IV.A.5. Finance and Budget.*

b. The forms noted above in *IV.A.6. Forms.*

c. The determination of eligibility that an applicant has received from the Department.[24] An applicant that has been found eligible in the past, but does not have a letter of eligibility, should request such a letter as soon as possible so it can receive one to include in its application.

d. Letters of support for the project are not required or expected.[25] Applicants that choose to submit letters of support should secure them soon enough to include them as application appendices.[26]

e. News media are informed by the Department when it announces awards. Applicants are invited to submit a list of news media the Department can contact when it issues its press release.[27] The most useful information is the fax number and email address of the news media contacts. These would include local newspapers, trade publications, local broadcast stations, and Internet sites. Rather than including these as ''hard-copy'' in the application, the Department invites applicants to submit this on floppy diskette, CD, or via email. Using the lowest version of any of the following file formats will ensure transferability: database (.dbf), Excel (.xls), Lotus 123 (.wk4), Word Perfect (.wpd), or Microsoft Word (.doc).

f. Current or past cooperators must submit a comparison between the proposed project and current or past projects. See *V.A.4. Creativity and Capacity* below.

B. Submission of Applications

1. Number of Pages: The main body of the application is limited to 50 pages. There is no limit on the number of pages for appendices. The main body of the application should include the substance of the applicant's proposal as identified in *IV.A.1.* through *IV.A.4.* above. Each page of the main body should be numbered.

2. Number of Copies: Each applicant must submit a signed original application plus two copies. The Department encourages applicants to submit five additional copies as well for a total of seven (7) copies.[28] However, if submitting seven (7) copies creates a financial hardship, applicants may submit the minimum of two copies plus the original.

If an applicant submits an original and two copies or any other number of copies greater than two and less than seven (7), the Department will make additional copies to allow all reviewers to read each application. However, the Department cannot guarantee that the copies will include features that are not easily reproduced on standard photocopy machines. For example, tabs might not be inserted, color pages might be reproduced in black and white, fold-out pages might not fold out, unusually sized (not 8.5″ × 11″) pages might be broken up, and the copies might be bound with staples or clips instead of the binding used for applicant-submitted material.

3. Distinguish Between Copies and Original: The Department needs to distinguish between the original application and copies. In order to facilitate processing of submitted applications, the Department recommends that applicants write or stamp ''original'' on the cover page of the original.

C. Retention of Applications

1. Award Winners: Copies of winning applications are distributed to project team members for their use in managing projects.

2. Unsuccessful and Ineligible Applicants: For each eligible application which does not win an award, the Department will retain the signed original of the application for seven years and will destroy the copies.

3. Late and Ineligible Applications Returned to Sender: Late applications are not accepted. Late applications and applications submitted by ineligible applicants are returned to the sender. However, the Department will retain a copy of the cover page or transmittal letter for seven years.

V. Evaluation and Selection

A. Evaluation Criteria

The Department is interested in projects that demonstrate the possibility of both significant results during the award period and lasting benefits extending beyond the award period. To that end, consideration for financial assistance under the MDCP will be based upon the following evaluation criteria:

1. Export Success Potential: Potential of the project to generate export success stories and/or export initiatives in both the short-term and medium-term. An export initiative is a significant expenditure of resources by the chief executive officer (CEO) of a company in

[24] If the applicant has not received such a determination, it must include in the appendices the documents requested in *III.C.1. Determination of Eligibility* above.

[25] The fact that a public official does or does not submit a letter of support does not confer any inherent competitive advantage to an applicant. On the other hand, some letters of support can be critical to the success of an application. For example, if funds for the cash match are to be provided by the state legislature, a letter of commitment from the state's governor or comptroller certifying the availability of the funds would help the Selection Panel greatly in its review.

[26] Including these as appendices may make it easier for all reviewers to find such letters in the same place in the application. The Department's standard practice for letters of support not included as application appendices is to make them available to reviewers until the time the Selection Panel identifies the top-ranked applications.

[27] Including news media contacts as an application appendix is not required, but doing so will help the Department publicize the success of the award winners.

[28] Several copies will be needed in order for the Department to complete its evaluation. (As noted below under *V.B. Evaluation and Selection Procedures*, four Selection Panel members and several Department staff will review each application.)

the active pursuit of export sales. Examples of export initiatives include, but are not limited to, the following:

a. Participating in an overseas trade promotion event;

b. Hiring an export manager;

c. Establishing an export department;

d. Exploring a new market through an overseas trip by the CEO;

e. Developing an export marketing/business plan;

f. Translating product literature into a foreign language;

g. Making product modifications to comply with foreign market requirements;

h. Commissioning an in-depth market research study;

i. Entering into a strategic alliance [29] with a foreign firm;

j. Advertising in a foreign business publication;

k. Undertaking an overseas direct-mail campaign to create product awareness;

l. Signing an agent/distributor;

m. Getting introduced to a potential foreign buyer; and

n. Signing an export contract/filling an export order.

Applicants should provide detailed explanations of projected results of the project.

2. Performance Measures: Projected increase (multiplier effect) in the number of U.S. companies operating in the market(s) selected, particularly SMEs, and the degree to which the project will increase or enhance the U.S. industry's presence in the foreign market(s).

Applicants must provide quantifiable estimates of projected increases and explain how they are derived. See *IV.A.3.b. Performance Measures* above. Applicants must detail the methods they will use to gather and report performance information.

3. Partnership and Priorities: The degree to which the project initiates or enhances partnership with ITA and the degree to which the proposal furthers or is compatible with ITA's priorities stated under *IV.A.3.c. Partnership* above.

4. Creativity and Capacity: Creativity, innovation, and realism displayed by the work plan as well as the institutional capacity of the applicant to carry out the work plan.

a. Creativity and innovation can be displayed in a variety of ways. Applicants might propose projects that include ideas not previously tried to promote a particular industry's goods or services in a particular market. Creativity can be demonstrated by the manner in which techniques are customized to meet the specific needs of certain client groups. A proposal can be creative in the way it brings together the strengths and resources of partners participating in project activities. Further, projects that focus on market development are more creative than projects that focus only on export promotion. Market development is the process of identifying or creating emerging markets or market niches and modifying products to penetrate those markets. Market development is demand driven and designed to create long-term export capacity. In addition to promoting current sales of existing products, market development promotes future sales and future products.

b. Current or past cooperators must submit a table comparing their current or past project(s) and their proposed project. The need for this table and the requested format are described below.

As noted in the *Summary* at the beginning of the RFA, MDCP awards are designed to help underwrite the start-up costs of new projects. Accordingly, current or past cooperators can be in a position to earn the maximum number of points under this criterion only if they propose projects that are entirely new.

In order to determine whether a project is entirely new, the current or past cooperator must provide, as a separate appendix, a comparison between the elements of the proposed project and the elements of its current or past MDCP-funded projects. Current or past cooperators that propose projects that are not entirely new will receive fewer points under this criterion than they would receive otherwise.

In determining the number of points under this criterion, the Selection Panel will consider the level to which a particular applicant has incorporated elements of its previously funded MDCP projects. To do this, current or past cooperators should submit a table wherein they approximate the amount of resources devoted to each project element as a percentage of the total. For example, if an applicant received an MDCP award in 1995 and spent approximately $400,000 of a total $1,000,000 project budget on opening an office in Beijing, it could report that 40 percent of the resources of its 1995 project went toward the project element of opening its Beijing office. The applicant would do the same for the other elements of its projects.

Previous project(s)		Proposed project	
Element	%	Element	%
1		1	
2		2	
etc.		etc.	
Total	100	Total	100

c. Institutional capacity will be measured by what each applicant submits. A current or past cooperator should not assume that success with a prior MDCP project will automatically be taken into account by the Department when reviewing its application. Each applicant must document its institutional capacity in its application.

5. Budget and Sustainability: Reasonableness of the itemized budget for project activities, the amount of the cash match that is readily available at the beginning of the project, and the probability that the project can be continued on a self-sustained basis after the completion of the award. Current or past cooperators must show how the proposed project will achieve self-sustainability independent of any current or past MDCP projects.

Each of the above criteria is worth a maximum of 20 points. The five criteria together constitute the application score. At 20 points per criterion, the total possible score is 100.

B. Evaluation and Selection Procedures

The applicant is responsible for submitting a complete application in a timely manner. Prior to selection, each complete application receives a thorough evaluation as set forth below.

1. Eligibility Determination: OPCM staff, in consultation with the Department's Office of General Counsel, review all applications to determine the eligibility of each applicant.

2. *ITA Program Area Review:* Relevant ITA program areas, including TD, MAC, and the Commercial Service, have the opportunity to review the submitted applications. This allows experts in the industry sector or geographical region to assess applicant claims. These reviewers provide insights into both the potential benefits and the potential difficulties associated with the applications.

3. MDCP Administrative Review: Representatives of OPCM review and comment on all applications using the evaluation criteria identified above. OPCM prepares for the Selection Panel a review packet including the applications and reviewer comments. The MDCP administrative staff and program area comments afford the Selection Panel the insights and breadth of experience of Department professionals. However, the Selection

[29] A collaboration of one company with another company that can provide resources to achieve corporate, economic and strategic goals. One benefit of strategic alliances is reciprocal access to more than one market. For example, firms in two different markets can agree to market each other's non-competing products in their respective ''home'' markets.

Panel is free to consider or disregard them as it sees fit.

4. Selection Panel Composition: The MDCP Manager forwards all of the eligible applications, along with all related materials, to the Selection Panel of senior ITA managers. This panel is chaired by the OPCM Director and typically includes three other members, one each from TD, MAC, and the Commercial Service. Panel members are Office Directors or higher.

5. Selection Panel Scoring: Each Selection Panel member reviews each eligible application and assigns a score for each of the five criteria stated above. The scores of each Selection Panel Member for each application reviewed are maintained in the files for seven years. The individual criteria scores are averaged to determine the total score for each application.

6. Ranked Recommendation: Based on the scores assigned by Selection Panel members and deliberations by the Selection Panel, the Selection Panel forwards the applications with the ten highest total scores (''top-ranked applications'') to the Assistant Secretary for Trade Development and recommends which of the top applications should receive funding. If the amount of funds requested by the top ten applicants is less than the funding available, the Selection Panel recommends additional applications for funding in rank order.

The Selection Panel's recommendation will not deviate from the rank order. This means, for example, that the Selection Panel cannot recommend funding for the application ranked seventh without recommending funding for applicants ranked first through sixth. The Selection Panel recommendation includes the panel's written assessment of the strengths and weaknesses of the top-ranked applications.

7. Selection of Applications for Funding: From the top-ranked applications forwarded by the Selection Panel, the Assistant Secretary for Trade Development selects those applications which will receive funding. In addition to the criteria in *V.A. Evaluation Criteria* above, the Assistant Secretary for Trade Development may consider the following in making decisions:

a. Scores of individual Selection Panel members and the Selection Panel's written assessments,

b. Degree to which applications satisfy the ITA priorities established under *IV.A.3.d. Project Funding Priorities* above,

c. Geographic distribution of the proposed awards,

d. Diversity of industry sectors and overseas markets covered by the proposed awards,

e. Diversity of project activities represented by the proposed awards,

f. Avoidance of redundancy and conflicts with the initiatives of other Federal agencies, and

g. Availability of funds.

C. Announcement of Award Decisions

Award winners will be notified by letter. Once award winners formally accept their awards, the Department will issue a press release and list the award winners at *www.export.gov/mdcp.*

Within ten days of the announcement of the issuance of the press release, unsuccessful applicants will be notified in writing and invited to receive a debriefing from MDCP officers.

VI. Other Requirements and Classification

A. Other Requirements

1. *Pre-Award Notification Requirements:* The Department's Pre-Award Notification Requirements for Grants and Cooperative Agreements, published on October 1, 2001 (66 FR 49917), are applicable to this RFA. However, please note that the Department will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidelines issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department* v. *Allbaugh,* 172 F. Supp. 2d 138 (DD.D.2001). This decision is currently on appeal. When the case has been finally resolved the Department will provide further information on implementation of Executive Order 13202.

2. Pre-Award Activities: Except as noted above in *II.C.4. Approved Pre-Award-Period Expenditure,* if applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of the Department to cover pre-award costs.

4. Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

B. Classification

1. Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

2. Paperwork Reduction Act: The standard forms referenced in this notice are cleared under OMB Control No. 0348–0043, 0348–0044, 0348–0040, and 0348–0046 pursuant to the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Dated: May 7, 2002.

Jerome S. Morse,

Director, Planning and Management Division, Office of Planning, Coordination and Management, Trade Development, International Trade Administration, Department of Commerce.

[FR Doc. 02–11786 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's interest in the inventions is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, e-mail: *mclague@nist.gov,* or fax: 301–869–2751. Any request for information should include the NIST Docket number and title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the inventions for purposes

of commercialization. The inventions available for licensing are:

[Docket No.: 97–021US]

Title: Temperature Calibration Wafer For Rapid Thermal Processing Using Thin-Film Thermocouples.

Abstract: This invention enables the measurement of temperature and the calibration of temperature measurements in rapid thermal processing tools for silicon wafer processing to a greater accuracy than previously possible. The invention is a device which is a calibration wafer of novel construction and capabilities. The calibration wafer is comprised of an array of junctions of thin film thermocouples which traverse the silicon wafer (typically 200 mm in diameter) and are welded to thermocouple wires of the same composition as the thin films. The advantages of very low mass thin-film thermocouples in making these measurements are greatest under the extremely high heat flux conditions present in rapid thermal processing tools (100 w/cm2). In order to achieve these measurements with thin-film thermocouples at temperatures ranging up to 900 degrees celsius a novel approach was taken in the design and fabrication of the wafer including the incorporation of an adhesion film for the thermoelements, diffusion barriers, and high temperature dielectric insulators.

[Docket No.: 98–024D]

Title: System For Stabilizing And Controlling A Hoisted Load.

Abstract: The invention provides a system which can both be adapted to existing single point lift mechanisms, and constrain a hoisted load in all six degrees of freedom, includes a suspension point, an assembly, a lateral tension lines member, and a control system. The assembly includes first and second platforms connected by a plurality of control cables which can precisely control the position, velocity, and force of a hoisted element in six degrees of freedom. The position or tension of the control lines can be controlled either manually, automatically by computer, or in various combinations of manual and automatic control. Advantages associated with the system include not only the ability to control the position, velocity, and force of the attached load, tool, and/or equipment in six degrees of freedom using position and tension feedback, but its ready adaptation to existing single point lift mechanisms and relatively light weight, and its flexibility, ease, and precision of operation.

[Docket No.: 00–033US]

Title: Rapid Fluorescence Detection Of Binding To Nucleic Acid Drug Targets Labeled With Highly Fluorescent Nucleotide Base Analogs.

Abstract: This invention is available for nonexclusive licensing. A method is disclosed for selective substitution of highly flourescent nucleotide base analogs within the sequence of nucleic acid drug targets, such that these bases can be used as probes to monitor/screen for the interaction of ligands with a nucleic acid target. In designing the fluorescent nucleic acid target, information about the nucleic acid structure and its native interaction with other macromolecules is used to engineer fluorescent analogs that display fluorescence emission quantum yields that are sensitive to interactions with ligands and/or other macromolecules. The general method of using changes in the fluorescence emission spectra as a probe for the interaction of the nucleic acid target with ligands has been named Flurescence Emission Peturbation (FREP).

Dated: May 3, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–11779 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board; Notice of Meeting

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the AF Scientific Advisory Board Predictive Battlespace Awareness (PBA) Executive Panel and Panel Chairs. The purpose of the meeting is to allow the panel chairs to report to the executive panel on the status of their portions of the PBA study; to receive the Joint Staff/J2 perspective on PBA; and to plan the remainder of the study. Because the briefings and discussion are classified, this meeting will be closed to the public.

DATES: 21 May 02 (0800–1630 EST).

ADDRESSES: A-Team Conference & Innovation Center, 1560 Wilson Blvd., Suite 400, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT: Colonel Marian Alexander, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–11700 Filed 5–9–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Army is proposing to add a new system of records notice to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action is effective without further notice on June 10, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 2, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 6, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0190–13 DAMO

SYSTEM NAME:

Security/Access Badges.

SYSTEM LOCATION:

Headquarters, Department of the Army staff, field operating agencies, states' adjutant general offices, and Army installations, activities, offices world-wide that issue security badges authorized by Army Regulation 190–13, The Army Physical Security Program. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals issued a security/access badge, authorized members of the Uniformed Services, civilian Department of Defense and contract employees and visitors entering Department of Defense properties, stations, forts, depots, arsenals, plants (both contractor and Government operated), hospitals, terminals, and other mission facilities and restricted areas, primarily used for military purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for security/access badge on appropriate Department of Defense and Army forms; individual's photograph, finger print record, special credentials, allied papers, registers, logs reflecting sequential numbering of security/access badges may also contain other relevant documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 190–13, The Army Physical Security Program and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record of security/access badges issued; to restrict entry to installations and activities; to ensure positive identification of personnel authorized access to restricted areas; to maintain accountability for issuance and disposition of security/access badges.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records in file folders and on cards, magnetic tapes, discs, cassettes, computer printouts, and microfiche.

RETRIEVABILITY:

By individual's name, Social Security Number, and/or security/access badge number.

SAFEGUARDS:

Data maintained in secure buildings accessed only by personnel authorized access. Computerized information protected by alarms and established access and control procedures.

RETENTION AND DISPOSAL:

Security identification applications are maintained for 3 months after turn-in of badge or card then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the issuing office where the individual obtained the identification card or to the system manager.

Individual should provide the full name, number of security/access badge, current address, phone number and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the issuing officer at the appropriate installation.

Individual should provide the full name, number of security/access badge, current address, phone number and signature.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–11669 Filed 5–9–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement (DEIS) for Disposal and Reuse of Naval Station Treasure Island (NSTI), San Francisco, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy (Navy) has prepared and filed with the United States Environmental Protection Agency (EPA) the DEIS for Disposal and Reuse of NSTI. A public hearing will be held to receive oral and written comments on the DEIS. Federal, state, and local agencies and interested individuals are invited to be present or represented at the hearing.

DATES AND ADDRESSES: A public hearing will be held on Tuesday, June 11, 2002, from 7:00 p.m. to 9:30 p.m. at the Nimitz Conference Center, Building 140, corner of ''D'' and ''California'' streets, Treasure Island, San Francisco, CA 94130 for the purpose of receiving oral and written comments on the DEIS.

FOR FURTHER INFORMATION CONTACT: Ms. Timarie Seneca, Community Planner, BRAC Operations Office at (619) 532–0955, by fax at (619) 532–0940 or write to Commander, Southwest Division, Naval Facilities Engineering Command, Attn: Ms. Timarie Seneca, Code 06CM.TS, 1230 Columbia Street, Suite 1100, San Diego, CA 92101–8517.

SUPPLEMENTARY INFORMATION: The DEIS has been prepared in accordance with the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687) and the recommendations of the Defense Base Closure and Realignment Commission approved by the President and accepted by Congress in 1991, 1993, and 1985.

A Notice of Intent (NOI) to prepare the DEIS was published in the **Federal Register** at 61 FR 50004, Sep. 24, 1996. A public scoping meeting was held on October 9, 1996, at the San Francisco Ferry Building.

The meeting was advertised in the *San Francisco Chronicle, Marin Independent Journal*, *San Jose Mercury*

News, and *Oakland Tribune* on Sunday, September 29, 1996, and Tuesday, October 1, 1996.

The proposed action is the disposal of Navy property for subsequent reuse and redevelopment, in accordance with the 1990 Defense Base Closure and Realignment Act, and the 1993 Base Realignment and Closure Commission recommendations. NSTI was operationally closed on September 30, 1997. NSTI is located on two islands in the San Francisco Bay approximately midway between the shores of the cities of San Francisco and Oakland. The larger island, called Treasure Island, consists of 402 acres (160 hectare (ha)) of dry land created with artificial fill in the 1930s. Approximately 681 acres (276 ha) of dry and submerged land are available for disposal on Treasure Island. Yerba Buena Island is a natural island connected to Treasure Island by a causeway. Approximately 239 acres (97 ha) of dry and submerged land are available for disposal on Yerba Buena Island. Approximately 36 acres (14 ha) of land on Treasure Island have been transferred to the Department of Labor, approximately 97 acres (39 ha) on Yerba Buena Island have been transferred to Caltrans, and a total of 22 acres (9 ha) are ultimately scheduled for transfer to the Coast Guard.

The DEIS evaluates three reuse alternatives. Navy disposal is assumed as part of each of the reuse alternatives. Alternative 1 represents full implementation of the development scenario described in the *Naval Station Treasure Island Draft Reuse Plan* developed by the Local Redevelopment Authority (LRA). Alternative 2 is based on comments received during the scoping process, including the recommendations of an Urban Land Institute advisory panel. Alternative 3 represents a lower level of redevelopment than proposed in the Draft Reuse Plan. A fourth alternative, No Action, assumes no disposal of property and retention of the property by the Navy in an inactive or caretaker status. Under the No Action Alternative, existing leases would continue until they expire or are terminated, no new leases would be entered into, and all buildings and other facilities would remain vacant and unused.

Alternative 1 (Preferred Alternative) features a combination of publicly oriented development, open space and recreation, and extensive residential development at full build out. Under Alternative 1, publicly oriented development on Treasure Island would include a theme attraction similar to Disneyland; with lighting displays, some tall structures, such as a roller coaster, and at least one landmark structure assumed to be up to 100 feet (305 meters (m)) tall. Development would also include a 300-room hotel and a 1,000-room hotel with three restaurants and offices. Publicly oriented uses on Yerba Buena Island would include a 150-room hotel, conference facilities, and a restaurant. Clipper Cove Marina would also be expanded and a new yacht club would be developed. Community uses on both islands would include public parks and open space, schools, a bikeway and pedestrian path. Industrial uses would include a new wastewater treatment plant, a new police station, and a new fire station on Treasure Island; these facilities and an existing fire station on Yerba Buena Island would be staffed with fire, paramedic, and police personnel. The elementary school, child development center, fire training school, and brig would be retained and reused for their original uses, with some modifications. Residential housing use would include reuse of existing housing as well as construction of new housing on both islands. No decision on the proposed action will be made until the NEPA process has been completed.

Potential impacts evaluated in the DEIS include, but are not limited to: Land use, visual resources, socio-economics, public services, utilities, cultural resources, biological resources, geology and soils, water resources, traffic and circulation, air quality, noise, and hazardous materials and waste. Potentially significant impacts that can be mitigated include: land use impacts related to inconsistencies with the general plan designation and zoning classification; traffic impacts to westbound and eastbound on and off ramps on Yerba Buena Island under Alternative 1; impacts to transit operations due to lack of bus service between NSTI and the East Bay under all alternatives; biological impacts to mudflats, wading shorebirds and essential fish habitat due to increased pedestrian and boating activities under all alternatives; potential exposure of individuals and property to ponding under Alternatives 1 and 3 and flooding hazards under all alternatives; and potential health and safety implications from future development activities interfering with remedial actions under the Comprehensive Environmental Response, Compensation, and Liability Act. The one significant impact that cannot be mitigated would be to cultural resources from demolition of two buildings on Treasure Island eligible for listing on the National Register of Historic Places under Alternative 2.

The DEIS has been distributed to affected Federal, state, and local agencies and other interested parties. In addition, copies of the DEIS are available for review at the following public libraries:

—San Francisco Main Library, 100 Larkin St (at Grove), San Francisco, CA 94102, (415) 557–4400

—Bayview/Waden Branch Library, 5075 3rd St (at Revere Ave), San Francisco, CA 94124, (415) 715–4100

—Potrero Branch Library, 1616 20th St (between Arkansas and Connecticut St), San Francisco, CA 94107, (415) 695–6640

—Chinatown Branch Library, 1135 Powell St (near Jackson St), San Francisco, CA 94108, (415) 274–0275

—North Beach Branch Library, 2000 Mason St (at Columbus Ave), San Francisco, CA 94133, (415) 274–0270

—Oakland Public Library (Main Branch), 125 14th St, Oakland, CA 94612, (510) 238–3134

—Oakland Library (Eastmont Branch), Eastmont Mall—2nd Flr, 7200 Bancroft Ave, Ste 211, Oakland, CA 94605, (510) 615–5726

A public hearing will be held to inform the public of the DEIS findings and to solicit and receive oral and written comments. Federal, state, and local agencies and interested parties are invited to be present at the hearing. Oral comments will be heard and transcribed by a court recorder; written comments are also requested to ensure accuracy of the record. Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public hearing. All comments, both oral and written, will become part of the official record. Comments should clearly describe specific issues or topics with the DEIS. In the interest of allowing everyone a chance to participate, speakers will be requested to limit their oral comments to five (5) minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to: Commander, Southwest Division, Naval Facilities Engineering Command, Attn: Ms. Timarie Seneca, Code 06CM.TS, 1230 Columbia St, Suite 1100, San Diego, CA 92101–8517. Comments must be postmarked by June 24, 2002, to be considered in this environmental review process.

Dated: May 2, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–11773 Filed 5–9–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.144]

Migrant Education Program (MEP) Consortium Incentive Grants Program

ACTION: Notice inviting applications for new awards for fiscal year 2002; Correction.

SUMMARY: The deadline for intergovernmental review for the FY 2002 Migrant Education Program (MEP) Consortium Incentive Grants program has been changed from August 2, 2002 to July 3, 2002. This notice corrects the deadline in the notice published in the **Federal Register** on April 26, 2002 (67 FR 20756).

FOR FURTHER INFORMATION CONTACT: Call or write James English, U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, 400 Maryland Ave., SW., Room 3E315, FOB6, Washington, DC, 20202–6135. Telephone: (202) 260–1394. Inquiries may be sent by e-mail to *james.english@ed.gov* or by FAX at (202) 205–0089.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: In order to permit the FY 2002 MEP Consortium Incentive Grants to be awarded without delay once the FY 2002 funds become available in early July, 2002, the Assistant Secretary for Intergovernmental and Interagency Affairs has waived the 60-day period for intergovernmental review required under E.O. 12372. Instead, the intergovernmental review period for these grant applications will be 30 days. In this way, the deadline for intergovernmental review under E.O. 12372 for the MEP Consortium Incentive grants will be July 3, 2002, rather than August 2, 2002 as previously announced in the notice inviting applications for new awards published in the **Federal Register** on April 26, 2002 (67 FR 20756).

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.* To use PDF you must have Adobe Acrobat reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at 202–512–1530.

Note: The official version of this document is the document publishef in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 6398(d).

Dated: May 6, 2002.

Susan B. Neuman,

Assistant Secretary, for Elementary and Secondary Education.

[FR Doc. 02–11644 Filed 5–9–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

U.S.-Africa Energy Ministerial Meeting

AGENCY: Department of Energy.

ACTION: Notice of public conference and opportunity to participate.

SUMMARY: This notice announces a public U.S.-African Energy Ministerial Conference co-sponsored by the Government of Morocco and Department of Energy of the United States. Attendance at the conference with the exception of the Energy Ministers Only session is open to the public at no charge. In addition, businesses may display exhibits on a fee basis at the conference.

DATES: Meeting date: June 3–4, 2002. Companies planning to attend the conference should register by calling 011–212–37–688–486 or by emailing casaconf@mem.gov.ma.

ADDRESSES: Send comments/questions to: Samuel.Browne@hq.doe.gov or Samuel Browne, US DOE, Office of Policy and International Affairs, PI–32, 1000 Independence Avenue, SW., Washington, DC 20585, or by phone at 202–586–8724.

SUPPLEMENTARY INFORMATION: The Government of Morocco and the Department of Energy are co-sponsoring the Third Conference of U.S.-Africa Energy Ministers. The theme of the conference is ''Energy Partnerships for Sustainable Development: Energy Security and Regional Integration.''

The conference, hosted by the Government of Morocco in Casablanca, will serve as a venue for the Energy Ministers to meet with one another and with other public and private sector representatives to discuss important issues, including developing an attractive investment climate and identifying opportunities for partnerships and project development. The Casablanca Conference follows the first U.S.-Africa Energy Ministers Conference, hosted by the United States in Tucson, Arizona, in 1999, and the Second Ministerial Conference, hosted by South Africa in Durban, in 2000. These Conferences were productive in enhancing the dialogue among public and private sector representatives on key energy issues. President Bush's National Energy Policy also reaffirms the importance of the U.S.-African Energy Ministerial process in its ability to help promote democracy, good governance, human rights, trade investment, and global integration.

Public Participation

There is no charge for the private sector to participate in the Ministerial. However, businesses or other entities wishing to display exhibits can access a point of contact via the Government of Morocco's conference email address at *casaconf@men.gov.ma.* The cost of the exhibit space is $1000.00 per exhibit. The conference is open to the public with the exception of the Energy Ministers Only session on June 4, 2 to 4 p.m.

Issued in Washington, DC, on April 30, 2002.

Vicky A. Bailey,

Assistant Secretary of Energy, Office of Policy and International Affairs.

[FR Doc. 02–11729 Filed 5–9–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–1–001]

Colorado Interstate Gas Company; Notice of Amendment

May 3, 2002.

Take notice that on April 29, 2002, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP01–1–001, a request to modify its variance request filed on April 19, 2002 to a Petition to Amend Order issued on May 16, 2001, all as more fully set forth

in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

CIG states that on October 2, 2000, it filed an application in Docket No. CP01–1–000 for authorization, pursuant to Section 7(b) of the Natural Gas Act (NGA), to abandon its Keyes Sand Reservoir at its Boehm Storage Field in southwest Kansas and for a certificate of public convenience and necessity, pursuant to Section 7(c) of the NGA, to construct and operate: (a) facilities to increase the deliverability of its Fort Morgan Storage Field in northeastern Colorado; and (b) pipeline looping and compression facilities to increase the capacity of its system south of its Cheyenne Compressor Station in Weld County, Colorado. On May 16, 2001, the Commission issued its Order Issuing Certificate and Approving Abandonment. As to the abandonment activity and temporary facilities set forth in ordering paragraph (A) of the May 16, 2001 Order, CIG states that it has not yet undertaken these activities.

With this amendment, CIG states that it has determined that the depletion of the Keyes Sand Reservoir can be more efficiently accomplished by modifying the original required facilities. CIG states that it now proposes to amend its certificate by: (1) Installing approximately 3,981 feet of 4'' O.D. and 6'' O.D. pipeline (Line No. 89F44) connecting the existing Keyes Sand Well Nos. 23, 26, 34 and 35 to the temporary compression and treatment plant. According to CIG, this would isolate its ability, through the dedication of one line, to deplete the reservoir without affecting the ability of the existing line to be used for storage related services; (2) installing an approximate 600 horsepower leased compressor, hydrogen sulfide treatment, and appurtenant facilities, all within a 250 foot by 350 foot plant yard and located immediately adjacent to the existing Boehm Central Dehydration Plant. According to CIG, this will reduce the area to be disturbed by the temporary facilities; (3) converting Keyes Sand Well Nos. 17, 36 and 47 to ''G'' Sand injection/withdrawal wells; and (4) converting Keyes Sand Well Nos. 14, 18, 21, 25 and 31 to Keyes Sand observation wells for improved monitoring of the reservoir.

Any questions concerning this application may be directed to Robert T. Tomlinson, Director, Regulatory Affairs Department, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, at (719) 520–3788 or fax (719) 520–4318.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 24, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11755 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–049]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

May 6, 2002.

Take notice that on April 30, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to the Federal Energy Regulatory Commission (Commission) the following contract for disclosure of a recently negotiated rate transaction:

FTS–1 Service Agreement No. 70440 between Columbia Gulf Transmission Company and Pogo Producing Company dated April 27, 2001

Transportation service which is scheduled to commence May 1, 2001.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding, and that copies of the filing are being made available for public inspection during regular business hours in Columbia Gulf's offices in Houston, Texas and Washington, DC.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11758 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–20–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

May 6, 2002.

Take notice that on April 30, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2002:

Seventh Revised Sheet No. 3
Fifth Revised Sheet No. 3A
Sixth Revised Sheet No. 3B
Fifth Revised Sheet No. 3C

Great Lakes states that the tariff sheets listed above are being filed to revise the system and zone maps included in Great Lakes' tariff pursuant to § 154.106(c) of the Commission's regulations. The revisions reflect the addition of the Mayfield and the Superior Interconnects to the western zone of Great Lakes' system. Great Lakes further states that the central and eastern zone maps are being filed at this time, for administrative purposes only, to reflect a map style consistent with the western zone map and the system map included in the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11757 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–056]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

May 6, 2002.

Take notice that on April 30, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing with the Federal Energy Regulatory Commission (Commission), Fourth Revised Sheet No. 26P.03 to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1 (Tariff), to be effective May 1, 2002.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural requests waivers of the Commission's Regulations to the extent necessary to permit the proposed tariff sheet to become effective May 1, 2002.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list at Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11759 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–238–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

May 6, 2002.

Take notice that on April 30, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing with the Federal Energy Regulatory Commission (Commission), certain tariff sheets to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1 (Tariff). An effective date of June 1, 2002, is requested for this tariff sheet.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions (GT&C) of its Tariff as the eighteenth semiannual limited rate filing under section 4 of the Natural Gas Act and the Rules and Regulations of the Commission promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under Section 21 are not reflected in this filing. The filing also includes a procedure for closing out the Section 21 mechanism.

Natural requests waivers of Section 21 of the GT&C of its Tariff and Commission Regulations to the extent necessary to permit Nineteenth Revised Sheet No. 22 to become effective June 1, 2002.

Natural states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11761 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–19–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed CHanges in FERC Gas Tariff

May 6, 2002.

Take notice that on April 30, 2002, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective June 1, 2002:

Fourth Revised Sheet No. 3
Third Revised Sheet No. 3A
Fifth Revised Sheet No. 3B

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the tariff maps to reflect changes in the pipeline facilities and the points at which service is provided. Panhandle requests confidential treatment of its maps. As such, only the Commission is receiving a hard copy of the revised tariff sheets that display the system maps in the original filing. The tariff sheets in the copies of the filing will identify the map and state that information has been removed for privileged treatment. Interested parties may request a copy of the confidential tariff sheets in accordance with Section 388.108 of the Commission's Regulations. Panhandle's shippers may contact Panhandle directly to request copies of the tariff map sheets.

Panhandle states that a public copy of this filing is available for public inspection during regular business hours at Panhandle's office at 5444 Westheimer Road, Houston, Texas 77056–5306. In addition, copies of the public portion of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11756 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–229–001]

Texas Eastern Transmission, LP; Notice of Errata Filing

May 6, 2002.

Take notice that Texas Eastern Transmission, LP (Texas Eastern) on April 30, 2002 tendered for filing an errata filing in order to correct certain typographical errors on the Summary of Refunds schedule included in its refund report filed on April 17, 2002 in Docket No. RP02–229.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11760 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–463–003]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

May 3, 2002.

Take notice that on April 29, 2002, Williston Basin Interstate Pipeline Company (Williston Basin or Company), tendered for filing under protest with the Commission as part of its FERC Gas Tariff, Second Revised Volume No. 1, the Pro Forma tariff sheets listed on Appendix A to the filing.

Williston Basin states that the revised tariff sheets are being filed under protest to comply with the requirements of the Commission's February 27, 2002 ''Order on Compliance With Order Nos. 637, 587–G and 587–L,'' in the above referenced dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered

by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11754 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–001, et al.]

San Diego Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

May 3, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. San Diego Gas and Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents California Independent System Operator Corporation

[Docket No. EL00–95–001 and ER02–1656–000]

Take notice that on May 1, 2002, the California Independent System Operator Corporation (ISO) tendered for filing in the above-captioned dockets its proposals for a Comprehensive Market Redesign. The ISO requests that certain elements of the filing be made effective on July 1, 2002 and others on October 1, 2002.

The ISO states that this filing has been served on the California Public Utilities Commission, all California ISO Scheduling Coordinators, and all parties in Docket No. EL00–95. *Comment Date:* May 22, 2002.

2. Florida Power & Light Company

[Docket No. ER02–139–003]

Take notice that on April 26, 2002, and Florida Power & Light Company (FPL) filed, pursuant to the order issued on March 27, 2002 in the above-captioned proceeding, a compliance filing making the required changes to the executed Interconnection and Operation Agreement between FPL and CPV Atlantic, Ltd. On May 1, 2002, three pages have been included that were omitted on April 26, 2002 filing. *Comment Date*: May 17, 2002.

3. Armstrong Energy Limited Partnership, LLLP, Pleasants Energy, LLC, and Troy Energy, LLC

[Docket Nos. ER02–300–004, ER02–301–004, ER02–835–002, ER02–837–002]

Take notice that on April 25, 2002, Armstrong Energy Limited Partnership, LLLP (Armstrong), Pleasants Energy, LLC (Pleasants) and Troy Energy, LLC (Troy), tendered for filing with the Federal Energy Regulatory Commission (Commission) revised pages in Armstrong and Troy's revised power purchase agreements for test power sales (Revised Test Power PPAs) and revised pages in Armstrong, Pleasants and Troy's power purchase agreements for the sale of commercial power to Dominion Virginia Power (Revised Commercial Power PPAs) that comply with the Commission's April 10, 2002 Order in the above listed proceedings.

Copies of the filing were served upon Ohio Public Utilities Commission, the Pennsylvania Public Service commission, the North Carolina Utilities Commission, Virginia State Corporation Commission and the Public Service Commission of West Virginia.

Comment Date: May 16, 2002.

4. Boston Edison Company

[Docket No. ER02–843–001]

Take notice that on April 25, 2002, Boston Edison Company (Boston Edison) tendered for filing an amendment to the executed Related Facilities Agreement between Boston Edison and Mirant Kendall, LLC (Mirant Kendall) originally filed on January 25, 2002 in this proceeding .

Comment Date: May 16, 2002.

5. Duke Energy Corporation

[Docket No. ER02–994–002]

Take notice that on April 26, 2002, Duke Energy Corporation (Duke) on behalf of Duke Electric Transmission, tendered for filing with the Federal Energy Regulatory Commission (Commission) revised rate schedule sheets reflecting changes to Exhibit D to the Restated Interchange Agreement (Restated IA) dated February 10, 1992 between Duke and South Carolina Public Service Authority. The revised rate schedule sheets supersede the sheets of Exhibit D filed on February 8, 2002 and revisions filed on March 15, 2002. In addition, Duke tendered for filing a revised rate schedule sheet to the Restated IA incorporating Supplement No. 4, which was filed with the Commission on December 20, 1996 in Docket No. OA97–205–000 and accepted for filing in a letter order dated February 17, 1999. Duke seeks an effective date for the revised rate schedule sheets of Exhibit D to the Restated IA of April 10, 2002.

Comment Date: May 17, 2002.

6. Phelps Dodge Energy Services, LLC

[Docket No. ER02–1026–001]

Take notice that on April 26, 2002, Phelps Dodge Energy Services, LLC (PDES) tendered for filing with the Federal Energy Regulatory Commission (the Commission) a revised FERC Electric Tariff, First Revised Volume No. 1, in compliance with the Commission's letter order dated April 15, 2002.

Comment Date: May 17, 2002.

7. ISO New England Inc.

[Docket No. ER02–1392–001]

Take notice that on April 26, 2002, the New England Power Pool (NEPOOL), filed a Report of Compliance, which contains changes to NEPOOL Market Rule and Procedure No. 5, in order to effect compliance with the Federal Energy Regulatory Commission's (Commission) April 12, 2002 letter Order in Docket No. ER02–1392–000.

NEPOOL states that copies of these materials were sent to the New England state governors and regulatory commissions and NEPOOL Participants Committee members and alternates and Non Participant Transmission Customers.

Comment Date: May 17, 2002.

8. Florida Power Corporation

[Docket No. ER02–1655–000]

Take notice that on April 30, 2002, Florida Power Corporation tendered for filing cost support updates for its interchange service agreements pursuant to Part 35 of the Federal Energy Regulatory Commission's (Commission) regulations. In addition to the cost support, the service agreements have been restated as required by the Commission's Order No. 614. The filing also cancels rate schedules associated with 11 terminated interchange service agreements, and updates the Real Power Loss Factors in the Open Access Transmission Tariffs of Florida Power and Carolina Power and Light Company.

Copies of the filing letter and cost support (which identifies the updated

charges) have been served on the counter-parties to the interchange service agreements and the interested state utility commissions.

Comment Date: May 21, 2002.

9. New York Independent System Operator, Inc.

[Docket No. ER01–2967–005]

Take notice that on April 26, 2002, the New York System Operator, Inc. (NYISO) filed revisions to Attachment S of its Open Access Transmission Tariff, which contains rules to allocate responsibility for the cost of new interconnection facilities, pursuant to the Federal Energy Regulatory Commission's (Commission) Order issued on October 26, 2001, in the above-captioned proceeding. The NYISO has requested an effective date of September 26, 2001, for the compliance filing, the effective date granted in the Commission's Order issued on October 26, 2001, in the above-captioned proceeding.

The NYISO has mailed a copy of this compliance filing to all persons that have filed interconnection applications or executed Service Agreements under the NYISO Open Access Transmission Tariff, to the New York State Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania. The NYISO has also mailed a copy to each person designated on the official service list maintained by the Commission for the above-captioned proceeding.

Comment Date: May 17, 2002.

10. Southern Indiana Gas and Electric Company

[Docket No. ES02–31–000]

Take notice that on April 29, 2002, Southern Indiana Gas and Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue, from time to time during the period ending June 22, 2004, short-term debt with no more than $250 million outstanding at any one time.

Comment Date: May 24, 2002.

11. Ameren Energy Generating Company

[Docket No. ES02–32–000]

Take notice that on April 29, 2002, Ameren Energy Generating Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue, from time to time during the period from June 23, 2002, through June 22, 2004, (1) up to $500 million of long-term debt, and (2) short-term debt with the total aggregate amount of all short-term debt outstanding at any one time not to exceed $300 million.

Comment Date: May 24, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11701 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7210–5]

Protection of Stratospheric Ozone: Process for Exempting Critical Uses of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of solicitation of applications and information on alternatives.

SUMMARY: EPA is soliciting applications for the Critical Use Exemption from the phaseout of methyl bromide. This application process offers users of methyl bromide the opportunity to provide technical and economic information to support a ''critical use'' claim.

Methyl bromide is a chemical pesticide that has been identified under the *Montreal Protocol on Substances that Deplete the Ozone Layer* and the Clean Air Act, as an ozone-depleting substance. It is scheduled for complete phaseout by January 1, 2005. The Critical Use Exemption is designed to allow continued production and import of methyl bromide after the phaseout for those uses that have no technically and economically feasible alternatives. Because Critical Use Exemptions are exemptions from the January 1, 2005 methyl bromide phaseout, they will become effective after that date.

Applicants for the exemption are requested to submit technical and economic information to EPA for U.S. review. The U.S. will then create a national nomination for review by the Parties to the Montreal Protocol. EPA encourages users with similar circumstances of use to submit a single application. Please contact your state regulatory agency to receive information about their involvement in the process.

DATES: Applications for the Critical Use Exemption must be postmarked on or before September 9, 2002.

ADDRESSES: Applications for the methyl bromide Critical Use Exemption should be submitted in duplicate (two copies) by mail to: U.S. Environmental Protection Agency, Methyl Bromide Critical Use Exemption, Global Programs Division, Mail Code 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or by courier delivery (other than U.S. Post Office overnight) to: U.S. Environmental Protection Agency, Methyl Bromide Critical Use Exemption, Global Programs Division, 501 3rd St., NW., Washington, DC 20001, phone: (202) 564–9410.

FOR FURTHER INFORMATION CONTACT:

General Information: U.S. EPA Stratospheric Ozone Information Hotline, 1–800–296–1996.

Technical Information: Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 703–308–8136.

Economic Information: David Widawsky, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 703–308–8150.

Regulatory Information: Amber Moreen, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 202–564–9295.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Do I Need to Know To Respond to This Request for Applications?

A. Who Can Respond to This Request for Information?

The Application Form may be submitted either by a consortium representing multiple users or by individual users who anticipate needing methyl bromide in 2005 and believe there are no technically and economically feasible alternatives. EPA encourages users with similar circumstances of use to submit a single application (for example, any number of pre-plant users with similar soil, pest, and climactic conditions can join together to submit a single application). In some instances, state agencies will assist users with the application process (see discussion of voluntary state involvement in Part I.B. below).

In addition to requesting information from applicants for the Critical Use Exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (e.g. technical and/or economic feasibility research). The Application Form for the methyl bromide Critical Use Exemption and other information on research relevant to alternatives must be sent to the addresses specified above.

B. Who Can I Contact To Find Out if a Consortium Is Submitting an Application Form for My Methyl Bromide Use?

Please contact your local, state, regional or national commodity association to find out if they plan on submitting an application on behalf of your commodity group.

Additionally, you should contact your state regulatory agency (generally this will be the State Department of Agriculture or State Environmental Protection Agency) to receive information about their involvement in the process. If your state agency has chosen to participate, EPA encourages all applicants to first submit their applications to the state regulatory agency, which will then forward them to EPA. The National Pesticide Information Center website is one resource available for identifying the lead pesticide agency in your state *(http://ace.orst.edu/info/npic/state1.htm).*

C. How Do I Obtain an Application Form for the Methyl Bromide Critical Use Exemption?

An Application Form for the methyl bromide Critical Use Exemption can be obtained either in electronic or hard-copy form.

EPA encourages use of the electronic form. Applications can be obtained in the following ways:

1. PDF format at EPA website: *www.epa.gov/ozone/mbr;*

2. Microsoft Excel and other electronic spreadsheet formats at EPA website: *www.epa.gov/ozone/mbr;*

3. Mailed hard-copy ordered through the Stratospheric Ozone Protection Hotline at 1–800–296–1996;

4. Hard-copy format at Air Docket No. A–2000–24. The docket is located in room M–1500, First Floor, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460. The Docket Office is open from 8:30am until 5:30pm Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

D. What Alternatives Must Applicants Address When Applying for a Critical Use Exemption?

To support the assertion that a specific use of methyl bromide is ''critical'', applicants are expected to demonstrate that there are no technically and economically feasible alternatives available to the user of methyl bromide. The Parties to the Montreal Protocol have developed an ''International Index'' of Methyl Bromide Alternatives which lists chemical and non-chemical alternatives, by crop (*http://www.epa.gov/ozone/mbr/alt_in.html*). The chemicals and non-chemical practices included on this index were identified by the international technical advisory groups under the Montreal Protocol: the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP). The MBTOC and the TEAP determined that alternatives in the International Index have the ''technical potential'' to replace methyl bromide in at least one circumstance of use on the identified crop (Report of the Technical and Economic Assessment Panel, 1997) (*http://www.teap.org/html/teap_reports.html*). A corresponding U.S. Index of alternatives (also listed by crop) has been developed by the U.S. government regarding chemical alternatives (*http://www.epa.gov/ozone/mbr*). This U.S. Index reflects whether chemical alternatives included in the International Index have been registered for use in the United States.

Applicants must address technical, regulatory, and economic issues that limit the adoption of ''chemical alternatives'' and combinations of ''chemical'' and ''non-chemical alternatives'' listed for their crop within the ''U.S. Index'' of Methyl Bromide Alternatives. Applicants must also address technical, regulatory, and economic issues that limit the adoption of ''non-chemical alternatives'' and combinations of ''chemical'' and ''non-chemical alternatives'' listed for their crop in the ''International Index''.

E. What Portions of the Applications Will Be Considered Confidential Business Information?

The person submitting information to EPA in response to this Notice may assert a business confidentiality claim covering part or all of the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as trade secret, proprietary, or company confidential. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the applicant, and may be submitted separately to facilitate identification and handling by EPA. If the applicant desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR Part 2 Subpart B; 41 FR 36902, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the applicant.

If you are asserting a business confidentiality claim covering part or all of the information in the application, please submit a non-confidential version that EPA can place in the public docket for reference by other interested parties. Do not include on the ''Worksheet Six: Application Summary'' page of the application any information that you wish to claim as confidential business information. These application information summary sheets will be posted on the EPA website (*www.epa.gov/ozone/mbr*) and included in Air Docket No. A–2000–24.

II. What Is the Legal Authority for the Critical Use Exemption?

A. What Is the Clean Air Act (CAA) Authority For Implementing the Critical Use Exemption to the Methyl Bromide Phaseout?

In October 1998, the U.S. Congress amended the Clean Air Act by adding CAA Sections 604(d)(6), 604(e)(3), and 604(h) (Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. No. 105–277; October 21, 1998)). The amendment requires EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries. Specifically, the amendment requires EPA to make regulatory changes to implement the following phaseout schedule:

25% reduction (from 1991 baseline) in 1999
50% reduction in 2001
70% reduction in 2003
100% reduction in 2005

EPA published regulations in the **Federal Register** on June 1, 1999 (64 FR 29240) and November 28, 2000 (65 FR 70795), instituting the phaseout reductions in the production and import of methyl bromide in accordance with the schedule listed above. Additionally, the 1998 amendment allowed EPA to exempt the production and import of methyl bromide from the phaseout for critical uses starting January 1, 2005 ''to the extent consistent with the Montreal Protocol'' (Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998)(Section 604(d)(6) of the Clean Air Act).

B. What Is the Montreal Protocol Authority For Granting a Critical Use Exemption After the Methyl Bromide Phaseout?

The Montreal Protocol provides an exemption to the phaseout of methyl bromide for critical uses in Article 2H, paragraph 5. The Parties to the Protocol included provisions for such an exemption in recognition that substitutes for methyl bromide may not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be ''critical uses''.

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a ''critical use'' determination:

> (a) That a use of methyl bromide should qualify as 'critical' only if the nominating Party [e.g. U.S.] determines that:
>
> (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and
>
> (ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.
>
> (b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:
>
> (i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;
>
> (ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries need for methyl bromide;
>
> (iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination * * * Non-Article 5 Parties [e.g., the U.S.] must demonstrate that research programmes are in place to develop and deploy alternatives and substitutes. * * *

In the context of the phaseout program, the use of the term consumption may be misleading. Consumption does not mean the ''use'' of a controlled substance, but rather is defined as the formula: consumption = production + imports − exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under EPA's phaseout regulations, unless otherwise precluded under separate regulations.

In addition to the language quoted above, the Parties further agreed to request the TEAP to review nominations and make recommendations for approval based on the criteria established in paragraphs (a)(ii) and (b) of Decision IX/6.

III. How will the U.S. Implement the Critical Use Exemption?

D. When Will the Exemption Become Available to U.S. Users of Methyl Bromide?

Under the provisions of both the CAA and the Montreal Protocol, the Critical Use Exemption will be available to approved uses on January 1, 2005. Until that date, all production and import of methyl bromide (except for those quantities that qualify for the quarantine and preshipment exemption) must conform to the phasedown schedule listed above (see Supplementary Information Section II A). For more information on the quarantine and preshipment exemption, please refer to 66 FR 37752 (July 19, 2001).

B. What Is the Projected Timeline For the Critical Use Exemption Application Process?

There is both a domestic and international component to the Critical Use Exemption process. The following outline represents a projected timeline for the process:

May 10, 2002	Solicit applications for the methyl bromide Critical Use Exemption for 2005.
September 9, 2002.	Deadline for submitting Critical Use Exemption applications to EPA.
Late 2002	U.S. government (EPA, Department of State, U.S. Department of Agriculture, and other interested federal agencies) create U.S. Critical Use nomination package.
January 31, 2003.	Deadline for U.S. government to submit U.S. nomination package to the Protocol Parties.
Early 2003	Review of the nominations packages for Critical Use Exemptions by the Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC).
Mid 2003	Parties consider TEAP/MBTOC recommendations.
Late 2003	Parties authorize Critical Use Exemptions for methyl bromide.
Early 2004	EPA publishes proposed rule for allocating Critical Use Exemptions in the U.S.
Late 2004	EPA publishes final rule allocating Critical Use Exemptions in the U.S.
January 1, 2005.	Critical Use Exemption permits the limited production and import of methyl bromide beyond the phaseout date for specific uses.

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

List of Subjects

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Methyl Bromide, Ozone layer, Reporting and Recordkeeping requirements.

Dated: April 18, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–11738 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6629–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa*

Weekly receipt of Environmental Impact Statements

Filed April 29, 2002 Through May 03, 2002 Pursuant to 40 CFR 1506.9.

EIS No. 020169, Final EIS, AFS, MO, Oak Decline and Forest Health Project, To Improve Forest Health, Treat Affected Stands, Recover Valuable Timber Products, Promote Public Safety, Potosi and Salem Ranger Districts, mark Twain National Forest, Crawford, Dent, Iron, Reynolds, Shannon and Washington, MO, Wait Period Ends: June 10, 2002, Contact: Karen Mobley (573) 729–6656.

EIS No. 020170, Draft EIS, COE, WV, Spurce Mine No. 1 Surface Mine Project, Proposed to Extraction (i.e., Maximum Mineral Recovery Based on Economic Considerations and Landowner Commitments) of High Quality Coal Reserve, Located in Blair, Logan County, WV, Comment Period Ends: June 24, 2002, Contact: James M. Richmond (304) 529–5210.

EIS No. 020171, Final EIS, USA, TX, Programmatic EIS—Fort Sam Houston, Camp Bullis, and Canyon Lake Recreation Area Master Plan, Implementing Revisions to the Existing 1988 Land Use Plan, City of San Antonio, TX, Wait Period Ends: June 10, 2002, Contact: Jackie Schlatter (210) 221–5093.

EIS No. 020172, Draft EIS, FRC, OR, North Umpqua Hydroelectric Project (FERC Project 1927), Issuing of Application for a New License for the Existing 185.5-megawatt (MW), Located on the North Umpqua River, Douglas County, OR, Comment Period Ends: June 24, 2002, Contact: John Smith (202) 219–2460. This document is available on the Internet at: *http://www.ferc.gov/.*

EIS No. 020173, Draft EIS, AFS, ID, The West Gold Creek Project, Proposing Forest Management Activities, Implementation, Idaho Panhandle National Forests, Sandpoints Ranger District, Bonner County, ID, Comment Period Ends: June 24, 2002, Contact: Judy York (208) 265–6665. This document is available on the Internet at: (*www.ferc.gov.*)

EIS No. 020174, Draft EIS, USN, CA, Naval Station Treasure Island Disposal and Reuse Property, Implementation, Local Redevelopment Authority (LRA), City of San Francisco, San Francisco County, CA, Comment Period Ends: June 24, 2002, Contact: Timarie Seneca (619) 532–0995.

EIS No. 020175, Final EIS, BLM, CA, Mesquite Mine Expansion Project, To Expand the Existing Open-Pit, Heap-Leach, and Precious Metal Mine, Federal Mine Plan of Operations Approval, Conditional Use Permits and Reclamation Plan Approval, Imperial County, CA, Wait Period Ends: June 10, 2002, Contact: Kevin Marty (760) 337–4422. This document is available on the Internet at: *www.ca.blm.gov/elcentro/mesquite/.*

EIS No. 020176, Final EIS, AFS, WA, Upper Charley Subwatershed Ecosystem Restoration Projects, Implementation, Pomeroy Ranger District, Umatilla National Forest, Garfield County, WA, Wait Period Ends: June 10, 2002, Contact: Monte Fujishin (509) 843–1891.

EIS No. 020177, Final EIS, NOA, HI, GU, AS, Coral Reef Ecosystems of the Western Pacific Region, Fishery Management Plan, Including Amendments to Four Existing (FMPs), Amendment 7—Bottomfish and Seamount Groundfish Fisheries, Amendment 11—Crustaceans Fisheries; Amendment 5—Precious Corals Fisheries and Amendment 10—Pelagics Fisheries, HI, GU and AS, Wait Period Ends: June 10, 2002, Contact: Charles Karnella (808) 973–2937.

Dated: May 7, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–11783 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6629–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–K65238–CA Rating EC2, Star Fire Restoration Removal of Fire-Killed Trees, Road Reconstruction, and Associated Restoration, Eldorado National Forests (ENF) Georgetown Ranger District, Middle Fork American River, Chipmunk Ridge and the North Fork of Long Canyon, Placer County, CA.

Summary: EPA expressed environmental concerns about impacts to riparian areas, water quality and wildlife habitat. The final EIS should expand the discussion on cumulative impacts, impacts from reasonably foreseeable actions and potential use of pesticides and herbicides.

ERP No. D–AFS–K65394–CA Rating EO2, Los Padres National Forest Oil and Gas Leasing Management, Implementation, Kern, Los Angeles, Monterey, Santa Barbara and San Luis Obispo Counties, CA.

Summary: EPA expressed environmental objections based on severe air quality impacts projected during maximum development activity. EPA noted that Standard Lease Terms-only, proposed under both of the Preferred Alternatives may not adequately protect natural resources. EPA recommends additional lease stipulations to reduce air emissions.

ERP No. D–AFS–L67037–00 Rating EC2, Programmatic—Siskiyou National Forest Suction Dredging Activities, Operating Plan Terms and Conditions Approval, Coos, Curry and Josephine Counties, OR and Del Norte County, CA.

Summary: EPA expressed environmental concerns over the lack of mitigation measures to address impacts of roads and limit potential adverse impacts to mollusks, amphibians and fish. EPA believes that mitigation measures included in Alternative 3 are

needed to reduce impacts of suction dredge mining to 303(d) listed waters and listed fish species. EPA recommends that the final EIS contain these measures, training for miners to identify and protect aquatic species and develop required planning documents under the Northwest Forest Plan, and a well defined enforcement strategy.

ERP No. D–FHW–L53003–WA Rating EC2, Vancouver Rail Project, Rail Improvements at the Burlington Northern and Santa Fe Rail Yard and Possible Elimination of the West 39th Street At-Grade Crossing, Funding and NPDES Permit Issuance, Clark County, WA.

Summary: EPA expressed environmental concerns that the draft EIS did not provide full disclosure of direct, indirect and cumulative environmental impacts, including impacts to wetland buffers, and does not provide sufficient discussion of alternatives.

ERP No. D–FTA–K54026–NV Rating EC2, Las Vegas Resort Corridor Project, Transportation Improvements, Funding, City of Las Vegas, Clark County, NV.

Summary: EPA expressed environmental concerns that the document does not provide sufficient information on environmental justice and cumulative impacts. EPA requested additional analysis and documentation on both of these issues.

ERP No. DS–FHW–F40368–WI Rating EO2, US–12 Highway Corridor Project, Improvement from IH90/94 at Lake Delton south to Ski Hi Road, Updated Information, Funding and US Army COE Section 404 Permit Issuance, Sauk County, WI.

Summary: EPA has concluded that potential adverse impacts to the Baraboo Hills resources will be significant and must be avoided to protect the environment. Specific objections are lack of consistency between the preferred alternative and the Highway 12 Memorandum of Agreement signed in 1999, indirect effects of the highway improvements, including secondary land use impacts, and the possibility of increased developmental pressure on the Baraboo Hills area's natural resources, and mitigation for anticipated impacts to interior forest habitat.

Final EISs

ERP No. F–BIA–L65330–WA White River Amphitheater Project, Construction and Operation of a 20,000 Seat Open-Air Amphitheater on the Muckleshoot Indian Reservation US Army COE Section 404 Permit and NPDES Permit Issuance, Seattle-Tocoma, King County, WA.

Summary: EPA requested that the concerns of local residents be addressed by implementing the mitigation measures. The records of Decision should commit to and implement actions that will mitigate traffic, noise, air and water quality.

ERP No. F–FHW–G40145–00 US 71 Highway Improvement Project, between Texarkana, (US71) Arkansas and DeQueen, Funding, Right-of-Way Grant and US Army COE Section 404 Permit Issuance, Little River, Miller and Sevier Counties, AR and Bowie County, TX.

Summary: EPA had no further comments to offer on the Final EIS. EPA had no objection to the preferred alternative.

ERP No. F–FHW–J40153–MT Montana State Primary Route 78 (P–78), Reconstruction, Widening and Realignment, from the junction with State Secondary Route 419 (S–419) which is just South of Abarokee, to the Southern end of the Yellowstone River Bridge which is just south of Columbus, MT.

Summary: EPA has environmental concerns regarding proposed stream channel modifications. EPA recommended consultation with the Montana Department of Environment Quality (MDEQ) to assure consistency of the proposed highway's construction activities with MDEQ's Total Maximum Daily Loading standards development for impaired water bodies in the project area.

ERP No. F–FHW–K40221–CA CA–84—Realignment Project, Transportation Improvement between CA–84 from I–880 to CA–2389/Mission Blvd, Funding and US Army COE Section 404 Permit Issuance, Cities of Fremont, Hayward and Union, Alameda County, CA.

Summary: EPA expressed continuing environmental concern that there is not enough information in the final EIS to assess the ways in which the project will impact waters of the United States and whether impacts have been avoided and minimized. EPA also commented that the conclusion that the project would not violate National Ambient Air Quality Standards for CO and PM10 at the project level was not supported.

ERP No. F–FTA–F40390–MN Northstar Transportation Corridor Improvement Project, Downtown Minneapolis to the St. Cloud Area along Trunk Highway 10/47 and the Burlington Northern Santa Fe Railroad Transcontinental Route connecting Hiawatha Light Rail Transit Line at a Multi-Modal Station, Minneapolis/St Paul International Airport and Mall of America, Bloomington, MN.

Summary: The final EIS includes additional information and discussions for the areas of concern identified in EPA's comment letters concerning the draft EIS and supplemental draft EIS. Direct wetland impacts have been reduced from 7.23 acres in the DEIS to 1.86 acres in the final EIS.

ERP No. F–NPS–D65023–DC Mary McLeod Bethune Council House National Historic Site General Management Plan, Implementation, Washington, DC.

Summary: No formal comment letter was sent to the preparing agency.

Dated: May 7, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–11784 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7210–7]

Meeting of the Clean Diesel Independent Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Act, Public Law 92–463, notice is hereby given that the Clean Diesel Independent Review Panel of the Clean Air Act Advisory Committee will be active until September 30, 2002. This notice pertains to the first meeting of the panel. All panel meetings are open to the public. The preliminary agenda for this meeting will be available on the panel's website in early May: *http://www.epa.gov/air/caaac/subcommittees.html.*

DATES: Thursday, May 23 from 9 a.m. to 5 p.m.Registration begins at 8:30 a.m.

ADDRESSES: The meeting will be held at the Old Town Holiday Inn Select, 480 King Street, Alexandria, VA 22314, (703) 549–6080.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Ms. Mary Manners, Designated Federal Official, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214–4873, fax (734) 214–4051, e-mail: *manners.mary@epa.gov.*

Logistical and Administrative Information: Ms. Julia MacAllister, FACA Management Officer, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division,

2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214–4131, fax (734) 214–4816, e-mail: *macallister.julia@epa.gov.*

Current Information: http://www.epa.gov/air/caaac/subcommittees.html.

Individuals or organizations wishing to provide comments to the panel should submit them to Ms. Manners at the address above by September 30, 2002. The Clean Diesel Independent Review Panel expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Dated: May 7, 2002.

Margo T. Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 02–11816 Filed 5–8–02; 1:33 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7210–6]

Technical Peer Review Workshop on the EPA Risk Assessment Forum Draft Framework for Cumulative Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA is announcing a meeting, organized and convened by Versar, Inc., a contractor to EPA's Risk Assessment Forum, for external scientific peer review on the draft Framework for Cumulative Risk Assessment (EPA/630/P–02/001A). The meeting is being held to discuss technical issues associated with cumulative risk assessment and how to capture these issues in a broad, flexible framework that will inform future guidance development efforts in this area. The EPA also is announcing a 30-day public comment period for the draft document. EPA will consider the peer review advice and public comment submissions in revising the Framework document.

DATES: The peer review meeting will be held from 8:30 a.m. to 5 p.m. on Tuesday, June 4, 2002 and from 8:30 a.m. to 5 p.m. on Wednesday, June 5, 2002. The 30-day public comment period begins May 10, 2002, and ends June 10, 2002. Technical comments should be in writing and must be postmarked by June 10, 2002.

ADDRESSES: The meeting will be held at the Courtyard Crystal City Hotel, 2899 Jefferson Davis Highway, Arlington, VA 22202. Versar, Inc., an EPA contractor, will convene and facilitate the workshop. To register to attend the workshop as an observer, visit *www.versar.com/epa/cumriskmtg.htm*, or contact Ms. Traci Bludis, Versar, Inc.; telephone: (703) 750–3000 extension 449; facsimile: 703–642–6954; e-mail *bluditra@versar.com* by 5 p.m. eastern daylight time, May 31, 2002.

The draft Framework for Cumulative Risk Assessment is available via the Internet on the Risk Assessment Forum Publications home page at *http://www.epa.gov/ncea/raf/rafpub.htm* under What's New. Copies are not available from Versar Inc.

Public comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, NW., 5th Floor, Washington, DC 20006; telephone: 202–564–3261; facsimile: 202–565–0050.

FOR FURTHER INFORMATION CONTACT: For further information concerning the technical peer review workshop or the draft Framework for Cumulative Risk Assessment, please contact Steven Knott, U.S. EPA Office of Research and Development (8601–D), 1200 Pennsylvania Ave. NW., Washington, DC 20460, Telephone (202) 564–3359, Fax (202) 565–0062, e-mail *knott.steven@epa.gov*.

SUPPLEMENTARY INFORMATION: Several reports have highlighted the importance of understanding the accumulation of risks from multiple environmental stressors. These include the National Research Council's (NRC) 1994 report *Science and Judgment in Risk Assessment* and the 1997 report by the Presidential/Congressional Commission on Risk Assessment and Risk Management entitled *Risk Assessment and Risk Management in Regulatory Decision-Making*. In addition, legislation such as the *Food Quality Protection Act of 1996* (FQPA), has directed the Environmental Protection Agency (EPA) to move beyond single chemical assessments and to focus, in part, on the cumulative effects of chemical exposures occurring simultaneously. Further emphasizing the need for EPA to focus on cumulative risks are cases filed under Title VI of the *1964 Civil Rights Act*.

In response to the increasing focus on cumulative risk, several EPA programs have begun to explore cumulative approaches to risk assessment. In 1997, The EPA Science Policy Council issued a guidance on planning and scoping for cumulative risk assessments. More recently, the Office of Pesticide Programs has developed cumulative risk assessment guidance focused on implementing certain provisions of FQPA. The Office of Air Quality Planning and Standards has applied cumulative exposure models in its analyses for the National-Scale Air Toxics Assessment (NATA).

The EPA Science Policy Council has asked the Risk Assessment Forum (RAF) to begin developing Agency-wide cumulative risk assessment guidance that builds from these ongoing activities. As a first step, a technical panel convened under the RAF has been working to develop a Framework for Cumulative Risk Assessment. Building from the Agency's growing experiences, this Framework is intended to identify the basic elements of the cumulative risk assessment process. It should provide a flexible structure for the technical issues and define key terms associated with cumulative risk assessment.

Feedback on early drafts of the Framework for Cumulative Risk Assessment was obtained through meetings with other Federal and State government scientists. In addition, feedback was obtained through a public peer consultation meeting held in August 2001. The workshop and public comment period announced in this notice are associated with the external scientific peer review of the current draft of the Framework. The peer review will focus on the technical issues associated with the draft Framework.

Dated: May 3, 2002.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–11737 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7210–3]

Paying for Water Quality: Managing Funding Programs To Achieve the Greatest Environmental Benefits; Report to Congress

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of report.

SUMMARY: The Environmental Protection Agency held a public workshop on March 14–15, 2002, to provide a forum to discuss how water quality funding programs can be managed and enhanced to achieve the greatest environmental benefit. A report to Congress entitled,

''Paying for Water Quality: Managing Funding Programs to Achieve the Greatest Environmental Benefit,'' was drafted based on the presentations and comments made during the workshop and is available for public comment and review. The report can be downloaded from EPA's Web site at *www.epa.gov/owm/srfwkshp.htm*. All comments can be sent to Jordan Dorfman, Environmental Protection Agency, Office of Wastewater Management, State Revolving Fund Branch, 1201 Constitution Avenue, NW, Washington, DC 20004, Mail Code 4204M; telephone: 202–564–0614; e-mail: *dorfman.jordan@epa.gov*.

DATES: The report will be available for public comment and review for a period of two weeks from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Jordan Dorfman, Environmental Protection Agency, Office of Wastewater Management, State Revolving Fund Branch; telephone: 202–564–0614; e-mail: *dorfman.jordan@epa.gov*.

Dated: April 30, 2002.

Richard T. Kuhlman,

Director, Municipal Support Division, Office of Wastewater Management.

[FR Doc. 02–11740 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7210–4]

Proposed Agreement Pursuant to Section 122(h)(1) of CERCLA for the Beloit Corporation Superfund Site

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice; request for public comment on proposed CERCLA 122(h)(1) agreement for the Beloit Corporation Superfund Site.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given of a proposed administrative cost recovery settlement under Section 122(h)(1) of CERCLA concerning the Beloit Corporation Superfund Site in Rockton, Illinois (the ''Site''). The proposed settlement was signed by the Director, Superfund Division, of Region 5, EPA on February 13, 2002, and has been approved by the Assistant Attorney General for the Environment and Natural Resources Division of the U.S. Department of Justice. The settlement has also been approved by the Chief Legal Counsel for the Illinois Environmental Protection Agency, and by the Chief of the Environmental Bureau of the Illinois Attorney General's Office.

Pursuant to the terms of the proposed settlement, Giuffre II, a limited liability company under Wisconsin law (''Giuffre''), will resolve: (1) Its alleged civil liability under CERCLA as an operator at the Site; and (2) its potential liability for Existing Contamination, as that term is defined in the settlement agreement, which would otherwise result from Giuffre becoming the owner and/or operator of the Beloit Property. Giuffre will make effective one or more irrevocable letters of credit in the total amount of $3 million. After the selection of the final remedial action for the Site in a Record of Decision (''ROD''), which EPA currently expects to occur in September of 2002, EPA will engage in Remedial Design/Remedial Action (''RD/RA'') negotiations with Giuffre. As provided by section 121(f)(1)(F), the State of Illinois will be provided the opportunity to participate in those negotiations. If those negotiations are successful, Giuffre will enter into an RD/RA Consent Decree, and EPA will release and return any unexercised letters of credit to Giuffre upon that company's substitution of financial assurance meeting the requirements of the RD/RA Consent Decree. In the event RD/RA negotiations are unsuccessful, then EPA will draw on the letters of credit provided by Giuffre and transfer the proceeds into a Beloit Special Account, to be used to pay for the costs associated with the remedial action selected in the ROD.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for public inspection at the Talcott Free Library, located at 101 East Main Street, Rockton, Illinois 61072, and at EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before June 10, 2002.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Sonja Brooks, Regional Docket Clerk, Region 5, EPA, 77 West Jackson Boulevard (R–19J), Chicago, Illinois 60604 (312–886–3617). Comments should reference the Beloit Corporation Superfund Site in Rockton, Illinois, and EPA Docket No. V–W–02–C–678, and should be addressed to Eileen L. Furey, Associate Regional Counsel, 77 W. Jackson Boulevard (C–14J), Chicago, Illinois 60604 (312–886–7950).

FOR FURTHER INFORMATION CONTACT: Eileen Furey at the address and phone number specified above.

Dated: May 3, 2002.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 02–11741 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–9]

Notice of Proposed Agreement for Recovery of Past and Future Response Costs Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Electro-Coatings Superfund Site, Cedar Rapids, IA, Docket No. CERCLA–07–2002–0002

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement for recovery of past and future response costs, Electro-Coatings Superfund Site, Cedar Rapids, Iowa.

SUMMARY: Notice is hereby given that a proposed agreement for recovery of past and future response costs concerning the Electro-Coatings Superfund Site, Cedar Rapids, Iowa, with the following parties: EC Industries, Inc., Electro-Coatings, Inc., Electro-Coatings of Iowa, Inc., and Shaver Road Investments (Settling Respondents). This proposed settlement was signed by the United States Environmental Protection Agency (EPA) on March 27, 2002.

DATES: EPA will receive written comments relating to the proposed agreement for recovery of past and future response costs by June 10, 2002.

ADDRESSES: Comments should be addressed to Denise L. Roberts, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to the Electro-Coatings Superfund Site Proposed Agreement for Recovery of Past and Future Response Costs, Docket No. CERCLA–07–2002–0002.

The proposed settlement may be examined or obtained in person or by mail from Kathy Robinson, Regional Hearing Clerk, at the office of the United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7567.

SUPPLEMENTARY INFORMATION: This Proposed Agreement concerns the Electro-Coatings Superfund Site, located in Cedar Rapids, Iowa and is made and entered into by EPA and EC Industries, Inc., Electro-Coatings, Inc., Electro-Coatings of Iowa, Inc., and Shaver Road Investments (Settling Respondents).

In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. 9604, including but not limited to investigations, sampling and analysis, and oversight of the monitoring of groundwater contamination caused by hexavalent chromium at the Site. In performing this response action, EPA incurred response costs at or in connection with the Site.

Pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), the Settling Respondents are responsible parties and are jointly and severally liable for response costs incurred at or in connection with the Site. The Superfund Division Director as Regional delegatee for the Regional Administrator of EPA Region VII, has determined that the total past and future response costs of the United States at or in connection with the Site will not exceed $500,000, excluding interest.

This Agreement requires the Settling Respondents to pay to the EPA Hazardous Substance Superfund the principal sum of $172,374.57 in reimbursement of 65% of past response costs, interest from January 31, 2001, and will resolve the Settling Respondents' alleged civil liability for these costs. In addition, the Settling Respondents shall also pay $12,800 in future oversight costs. The proposed Agreement includes a covenant not to sue the Settling Respondents pursuant to Section 122(g)(2) of CERLCA, 42 U.S.C. 9622(g)(2).

Dated: April 29, 2002.

William W. Rice,

Deputy Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 02–11739 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 3, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments July 9, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0394.

Title: Section 1.420, Additional Procedures in Proceedings for Amendment of FM or TV Table of Allotments.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 30.

Estimated Time Per Response: 20 minutes—2 hours (20 minutes consultation; 1–2 hours contract attorney).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 10 hours.

Annual Reporting and Recordkeeping Cost Burden: $9,000.

Needs and Uses: Section 1.420 requires a petitioner seeking to withdraw or dismiss its expression of interest in allotment proceedings to file a request for approval. This request would include a copy of any related written agreement and an affidavit certifying that neither the party withdrawing its interest nor its principals has received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, an itemization of the expenses for which it is seeking reimbursement, and the terms of any oral agreement. Each remaining party to any written or oral agreement must submit an affidavit within five days of the petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that an expression of interest in applying for, constructing, and operating a station was filed under appropriate circumstances to not to extract payment in excess of legitimate and prudent expenses.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–11720 Filed 5–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 3, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control

number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 9, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0012.

Title: Application for Additional Time to Construct a Radio Station.

Form No.: FCC Form 701.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 130.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 260 hours.

Total Annual Cost: $22,375.

Needs and Uses: The FCC Form 701 will be used when applying for additional time to construct for MDS (Part 21) and International Broadcast (Parts 23 and 25) stations. The form is used by agency staff to determine whether to grant the applicant's request for an additional period of time to construct a station. Without this collection of information, the agency could not determine whether the applicant's request for additional time to construct should be granted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–11721 Filed 5–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

May 1, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 20, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Jeanette Thornton, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via Internet at *Jeanette_I._Thornton@omb.eop.gov,* and Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith Boley Herman at 202–418–0214 or via Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has requested emergency OMB review of this collection with an approval by May 20, 2002.

OMB Control Number: 3060–0989.

Type of Review: Revision of a currently approved collection.

Title: Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired Through Corporate Control, 47 CFR 63.01, 63.03 and 63.04.

Form No.: N/A.

Respondents: Business or other for-profit.

Number of Respondents: 35.

Estimated Time Per Response: 3–65 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1,655 hours.

Total Annual Cost: $20,000.

Needs and Uses: The Report and Order in CC Docket No. 01–150, FCC 02–78, provides presumptive streamlining categories, allows for joint applications for international and domestic transfers of control, clarifies confusion about content of applications, provides timelines for streamlined transaction review, provides a pro forma transaction process, allows asset acquisitions to be treated as transfers of control and deletes obsolete sections of the Commission's rules. The information will be used by Commission staff to ensure that applicants comply with the requirements of 47 U.S.C. 214.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–11670 Filed 5–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:27 a.m. on Tuesday, May 7, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory, and litigation activities.

In calling the meeting, the Board determined, on motion of Director John D. Hawke, Jr. (Comptroller of the Currency), seconded by Director John D. Reich (Appointive), and concurred in by

Director James E. Gilleran (Director, Office of Thrift Supervision), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Federal Deposit Insurance Corporation.

Dated: May 7, 2002.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 02–11938 Filed 5–8–02; 3:37 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 28, 2002.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Peter DaPaul, Ambler, Pennsylvania; to gain control of the outstanding common stock of Madison Bancshares Group, Ltd., Blue Bell, Pennsylvania, pursuant to Section 225.41 of Regulation Y, and thereby indirectly acquire voting shares of Madison Bank, Blue Bell, Pennsylvania.

Board of Governors of the Federal Reserve System, May 6, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–11677 Filed 5–9–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission For OMB Review; Comment Request

The Department of Health and Human Services, Office of the Scretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Survey of Research Integrity Measures Utilized in Biomedical Research Laboratories—New—The Office of Research Interity (ORI) expanded its education program to promote research integrity and discourage research misconduct. The proposed survey will identify measures being utilized to prevent misconduct and promote integrity in research laboratories. The results will guide ORI in the development of training and other educational material promoting research integrity. *Respondents:* Business or other for-profit, non-profit institutions; *Number of Respondents:* 5,000; *Frequency of Response:* one time; *Average Burden per Response:* 15 minutes; *Burden:* 1,250 hours.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed inforamtion collection should be sent directly to the OMB desk officer designated above at the following address. Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Indepence Avenue SW., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: April 30, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–11731 Filed 5–9–02; 8:45 am]

BILLING CODE 4150–31–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–50]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Surveys of Past HIV Prevention Technology Transfer Efforts—New—National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC proposes to study the effectiveness of providing a packaged intervention, training, and technical assistance to HIV prevention agencies to ensure the agencies' maintenance of the intervention and adherence to the essential components of the intervention's defined protocol. Results from the survey will be used by CDC to develop a national program for disseminating packaged interventions

that will increase the likelihood of continued use by agencies. This project supports CDC's Replicating Effective Programs (REP) project. The REP converts the intervention protocols from effective HIV prevention studies into packages (kits) containing manuals, videos, posters, penile models, and other materials needed by HIV prevention providers to implement the particular intervention on their own.

The surveys will be disseminated to staff members of 16 prevention agencies that implemented one of five unique, packaged interventions between 1997 and 2000 as part of CDC's ongoing REP project. One survey will be administered over the telephone to Agency Administrators from the 16 prevention agencies that implemented an intervention packaged by the REP project. Additional surveys will be administered in-person to one Intervention Supervisor and two Intervention Facilitators at 15 prevention agencies that are continuing to implement the REP-packaged intervention.

The objectives of the surveys include, but are not limited to, (1) Identification of factors associated with maintenance and discontinuation of REP-packaged interventions; (2) determination of why and how agencies adapted the packaged interventions; (3) examination of the impact of elapsed time on maintenance of the intervention and adherence to defined intervention protocols; (4) identification of any differences between the type of agency (i.e., community-based organization, health department) on maintenance and adherence; (5) identification of any difference between the type of original researcher (i.e., academic, non-profit) on maintenance and adherence; and (6) identification of perceived and actual benefits, as well as ''instrumental'' and ''conceptual'' utility, of REP-packaged interventions that can be used in marketing the intervention packages to other HIV prevention providers. Researchers administering the in-person surveys also will assess adherence to defined intervention protocols by observing facilitators delivering the intervention and by recording their observations on a checklist designed for the particular intervention being observed.

Survey questionnaire data will be collected once from each respondent (e.g., Agency Administrator, Intervention Supervisor, Intervention Facilitator). There are no costs to respondents for participation in the survey.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hours)	Total burden hours
Agency Administrators	16	1	108/60	29
Intervention Supervisors	15	1	90/60	23
Intervention Facilitators	30	1	105/60	53
Total				105

Dated: May 2, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–11664 Filed 5–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–51]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Intimate Partner Violence (IPV) Measurement—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Intimate partner violence (IPV) is considered by many to be a serious problem that cuts across cultures, socioeconomic status and gender. The Centers for Disease Control and Prevention (CDC) considers IPV to be a ''substantial public health problem for Americans that has serious consequences and costs for individuals, families, communities and society.'' The past twenty years have witnessed an extraordinary growth in research on the prevalence, incidence, causes and effects of IPV. Various disciplines have contributed to the development of research on the subject including psychology, epidemiology, criminology and public health.

Still, there is a lack of reliable information on the extent and prevalence of IPV. Estimates vary widely regarding the magnitude of the problem. This variance is due in large part to the different contexts, instruments, and methods that are used to measure IPV. Thus, the CDC is engaged in work to improve the quality of data, and hence knowledge, about violence against women. Part of this process includes identifying the strengths and limitations of different scales used to measure IPV and to determine the appropriateness of each of the scales for use with individuals of different racial/ethnic backgrounds.

The purpose of this project is to administer and test the statistical properties of four scales, via telephone interviews, that measure both victimization from and perpetration of

intimate partner violence (IPV). The scales will be administered to a random sample of women ages 18–50, from five racial/ethnic backgrounds: African-American, American Indian, Asian, Caucasian and Hispanic.

The four scales are: The Sexual Experiences Survey (SES), the Conflict Tactics Scale 2 (CTS2), the Index of Spouse Abuse (ISA) and the Women's Experience with Battering (WEB) scale. The survey instrument will contain each of these scales and introductory and transitional text developed specifically for this study.

The overall benefit of this project is to increase knowledge about the reliability and validity of these scales, which have been used in previous studies. Ultimately, this knowledge will assist the CDC in establishing an on-going data collection system for monitoring IPV. The National Center for Injury Prevention and Control (NCIPC) intends to contract with an agency to conduct the survey. There is no cost to respondents.

Survey IPV measurement	Type of respondent	Number of respondents/survey	Number of responses/respondent	Avg. burden/responses in hours	Total burden hours
African-American	Female	400	1	30/60	200
American Indian	Female	400	1	30/60	200
Asian	Female	400	1	30/60	200
Caucasian	Female	400	1	30/60	200
Hispanic	Female	400	1	30/60	200
Total					1,000

Dated: May 1, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–11665 Filed 5–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–49]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: 2003 National Health Interview Survey, Basic Module (0920–0214)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. In accordance with the 1995 initiative to increase the integration of surveys within the Department of Health and Human Services, respondents to the NHIS serve as the sampling frame for the Medical Expenditure Panel Survey. This survey is conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, ''Healthy People 2010.''

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a shift from paper questionnaires to computer assisted personal interviews (CAPI). These redesigned elements were partially implemented in 1996 and fully implemented in 1997. This clearance is for the seventh full year of data collection using the core questionnaire on CAPI, and for the implementation of supplements on asthma, heart disease, children's mental health, cancer screening, and diabetes. The supplements will help track many of the Health People 2010 objectives. This data collection, planned for January-December 2003, will result in publication of new national estimates of health statistics, release of public use microdata files, and a sampling frame for other integrated surveys. There is no cost to the respondents other than their time.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Family	39,000	1	21/60	13,650
Sample adult	32,000	1	42/60	22,400
Sample child	13,000	1	15/60	3,250

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Total				39,300

Dated: May 1, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–11666 Filed 5–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–55]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Survey for Laboratory Containment of Wild Polioviruses—New—National Vaccine Program Office (NVPO), Centers for Disease Control and Prevention (CDC). Global polio eradication is anticipated within the next few years. The only sources of wild poliovirus will be in biomedical laboratories. Prevention of inadvertent transmission of polioviruses from the laboratory to the community is crucial.

The first step toward laboratory containment is a national survey of all biomedical laboratories. The survey will alert laboratories to the impending eradication of polio, encourage the disposition of all unneeded wild poliovirus infectious and potential infectious materials, and establish a national inventory of laboratories retaining such materials. Laboratories on the inventory will be kept informed of polio eradication progress and notified, when necessary, to implement biosafety requirements appropriate for the risk of working with such materials.

In June 2001, the Secretary for Health and Human Services, Tommy Thompson, declared in a letter to the Regional Director of the Pan American Health Organization that:

The United States is fully committed to PAHO's Executive Committee Resolution CE126.R4 urging Member States ''to initiate activities related to the containment of any laboratory material that may harbor specimens of wild poliovirus.''

The Department of Health and Human Services proposes a national survey of all biomedical laboratories that may possess wild poliovirus infectious or potential infectious materials. An estimated 15,000 biomedical laboratories, in six categories of institutions: academic, federal government, hospital, industry, private, and state and local government facilities, will be included in the national survey.

The national survey instruments and logistics will be tested during the OMB approved Pilot Survey (OMB Number: 0920–0545), scheduled to begin May 2002. The survey instruments ask laboratories to indicate whether or not they possess wild poliovirus infectious and/or potential infectious materials. If such materials are present, respondents are asked to indicate the types of materials and estimated numbers retained. Survey instruments will be available on the NVPO web page, and institutions will be encouraged to submit completed survey forms electronically.

No cost beyond time involved to complete the survey will be charged to the respondent. The time required for individuals and institutions to complete the national survey instruments is a function of records quality in each laboratory. It will take the respondent an average of 45 minutes to complete the survey form.

Respondents (institutions in the following categories)	Number of respondents*	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Academic	301	1	45/60	226
Federal	10	1	45/60	8
Hospital	5,134	1	45/60	3,851
Industry	1,217	1	45/60	913
Private	4,226	1	45/60	3,170
State and local government	1,499	1	45/60	1,124
Total				*9,292

*The database of biomedical laboratories is currently under development. The numbers of respondents are best estimates.

Dated: May 6, 2002.

Nancy E. Cheal,

Acting Associate Director for, Policy, Planning and Evaluation, Centers for Disease Control, and Prevention.

[FR Doc. 02–11712 Filed 5–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02143]

Validating the Effectiveness of a Hand Hygiene Intervention Program in Healthcare Facilities; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Validating the Effectiveness of a Hand Hygiene Intervention Program in Healthcare Facilities. This program addresses the ''Healthy People 2010'' focus areas of Access to Quality Health Services and Immunization and Infectious Diseases.

The purpose of the program is to demonstrate the impact of a specific hand hygiene intervention program in a group of healthcare facilities in which no such hand hygiene program previously existed. The hand hygiene intervention program to be evaluated was developed in collaboration with CDC by the Chicago Antimicrobial Resistance Project (CARP). The goals of this program are to: (1) Evaluate the reproducibility of the CARP hand hygiene intervention program in healthcare facilities in which no such hand hygiene program previously existed; (2) evaluate the impact of the program on the incidence of isolation of antimicrobial resistant microorganisms; and (3) evaluate the suitability of this program to be developed into a public health product that can be widely promoted to healthcare facilities nationwide.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible for this award.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $197,830 is available in FY 2002 to fund one award. It is expected that the award will begin on or about August 1, 2002 and will be made for a 12-month budget period within a project period of one year. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Equipment may be purchased with cooperative agreement funds. However, the equipment proposed should be appropriate and reasonable for the activity to be conducted. The applicant, as part of the application process, should provide: (1) A justification for the need to acquire the equipment; (2) the description of the equipment; (3) the intended use of the equipment; and (4) the advantages/disadvantages of purchase versus lease of the equipment (if applicable). Requests for equipment purchases will be reviewed and approved only under the condition that the National Center for Infectious Diseases, Division of Health Quality Promotion, will retain the right to request return of all equipment which is in operable condition and was purchased with cooperative agreement funds at the conclusion of the project period.

Funding Preferences

1. Funding preference will be given to applicants affiliated with integrated healthcare delivery networks (such as hospital ''chains'' or managed care organizations which operate their own healthcare facilities).

2. Funding preference will be given to healthcare delivery networks that have between four and ten healthcare facilities in close geographic proximity to one another that share a common administration and electronic information systems, including at least two long-term care facilities.

3. Funding preference will be given to applicants who have already identified a person that has a demonstrated background in infection control in healthcare facilities who can be designated to work full-time on this project.

4. Funding preference will be given to applicants who demonstrate a willingness to model, in collaboration with CDC, their hand hygiene intervention program after the CARP hand hygiene intervention program.

5. Funding preference will be given to applicants who have existing infrastructure and experience to perform active surveillance for healthcare-associated infections and antimicrobial resistance using methodology consistent with the National Nosocomial Infections Surveillance System (NNIS).

6. Funding preference will be given to applicants who have installed alcohol-based handrub dispensers in all patient care areas of facilities which will participate in the project.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. In collaboration with CDC, develop and implement a formal hand hygiene program in multiple healthcare facilities which has the following components:

(1) Regular educational presentations. At a minimum, educational presentations will be given annually to each healthcare worker. The interactive presentation uses an audience response system, an educational tool which actively engages the audience and allows participants to respond to the speaker and compare their own response with that of others. Components of the presentation include: review of the Hospital Infection Control Practice Advisory Committee's hand hygiene guideline, review of hospital policy related to hand hygiene and infection control, current hand antisepsis options for healthcare workers, data on hospital-specific hand hygiene adherence rates, benefits of alcohol-based hand rubs, importance of wearing gloves, effect of artificial nails on hand antisepsis, rings as a risk factor for healthcare worker hand contamination, and generalized hand care; including use of lotions. The presentation also includes two accompanying handouts: an individual, pocket-sized bottle of alcohol hand rub, and a fact sheet with questions and

answers regarding alcohol-based hand rubs.

(2) Displays/Visuals.

(i) Poster campaign using specific templates provided by the CDC

(ii) Infection control game utilizing questions and answers pertaining to hand hygiene

(iii) Distribution of promotional items with hand hygiene messages (e.g. buttons, key chains, pens, and mugs)

(3) Motivational Items.

(i) Feedback of hand hygiene adherence rates to clinical areas and groups

(ii) Recognition of achievements

b. Perform observational prospective hand hygiene surveillance using a structured protocol in every participating facility.

c. Measure antimicrobial resistance rates before during and after implementation of the program using the methods of the Antimicrobial Use and Resistance (AUR) component of the National Nosocomial Infection Surveillance system.

d. In collaboration with CDC, develop a plan to evaluate cost-effectiveness of the intervention.

2. CDC Activities

a. Collaborate, as appropriate, with the recipient in all stages of the program, and provide programmatic and technical assistance.

b. Assist in data collection, analysis, and interpretation of data from the project.

c. Participate in improving program performance through consultation based on information and activities of other projects.

d. Provide scientific collaboration for appropriate aspects of the program, preventive measures, and program strategies.

e. Assist in the reporting and dissemination of research and other results and relevant healthcare quality prevention education and training information to appropriate Federal, State, and local agencies, healthcare providers, the scientific community, and prevention and service organizations with an interest in healthcare quality, and the general public.

f. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Content

Letter of Intent (LOI)

An LOI is optional for this program. The narrative should be no more than three double-spaced pages, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to enable CDC to determine the level of interest in the program announcement. Your letter of intent should identify Program Announcement Number 02143, and include the following information: (1) Name and address of institution, and (2) name, address, telephone number, e-mail address, and fax number of a contact person.

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

1. Provide a line-item budget and narrative justification for all requested costs. The budget should be consistent with the purpose, objectives and research activities, and include:

a. Line-item breakdown and justification for all personnel, i.e., name, position title, annual salary, percentage of time and effort, and amount requested.

b. For each contract: (1) Name of proposed contractor; (2) breakdown and justification for estimated costs; (3) description and scope of activities to be performed by contractor; (4) period of performance, (5) method of contractor selection (e.g., sole-source or competitive solicitation); and (6) method of accountability.

c. A description of any financial and in-kind contributions from nonfederal sources.

Additionally, include a one page, single-spaced, typed abstract. The heading should include the title of the cooperative agreement, project title, organization, name and address, project director, and telephone number. This abstract should include a workplan identifying activities to be developed, activities to be completed, and a time-line for completion of these activities.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm* or in the application kit. On or before July 14, 2002, submit the application to: Technical Information Management–PA02143, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (10 points)

The extent to which the applicant demonstrates a strong understanding of this program for validating the effectiveness of a hand hygiene intervention program in healthcare facilities. The extent to which the applicant illustrates the need for this cooperative agreement program. The extent to which the applicant presents a clear goal for this cooperative agreement that is consistent with the described need.

2. Capacity (30 points)

The extent to which the applicant demonstrates that it has the expertise, facilities, and other resources necessary to accomplish the program requirements, including curricula vitae of key personnel and letters of support from any participating organizations

and institutions. In particular, the degree to which the applicant demonstrates a healthcare delivery network which includes adequate numbers of facilities in close geographic proximity to one another that share common administration and information systems, and who demonstrate a willingness to fully participate.

3. Operational Plan (40 points)

a. The extent to which the applicant presents clear, time-phased objectives that are consistent with the stated program goal and a detailed operational plan outlining specific activities that are likely to achieve the objective. The extent to which the plan clearly outlines the responsibilities of each of the key personnel. (35 points)

b. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

4. Evaluation Plan (15 points)

The extent to which the applicant presents a scientifically valid plan for monitoring the impact of the intervention, including, but not limited to, cost effectiveness.

5. Measures of Effectiveness (5 points)

The extent to which the applicant provides Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome.

6. Budget (Not scored)

The extent to which the applicant presents a reasonable detailed budget with a line-item justification and any other information to demonstrate that the request for assistance is consistent with the purpose and objectives of this cooperative agreement program.

7. Human Subjects (Not scored)

The extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of this announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Rene' Benyard, Grants Management Specialist, Centers for Disease Control and Prevention, Procurement and Grants Office, Acquisition and Assistance, Branch B, 2920 Brandywine Road, Room 3000, Mailstop K–75, Atlanta, GA 30341–4146, Telephone number: (770) 488–2722, E-mail address: *bnb8@cdc.gov.*

For program technical assistance, contact: John Jernigan, M.D., Centers for Disease Control and Prevention, National Center for Infectious Diseases, Division of Healthcare Quality and Promotion, 57 Executive Park South, Room 4109, Mailstop E–68, Telephone number: (404)498–1257, E-mail address: *Jjernigan@cdc.gov.*

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11709 Filed 5–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02118]

Fellowship Training Programs In Vector-Borne Infectious Diseases; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for a graduate level Fellowship Training Program in Vector-Borne Infectious Diseases, leading to a master's or doctoral degree. This program addresses the ''Healthy People 2010'' focus area of Immunization and Infectious Diseases.

The purpose of this cooperative agreement is to assist recipients in the development and implementation of a two to three year Fellowship Training Program (FTP) in entomology, arbovirology, and microbiology, which provides a combination of entomologic, virologic, and microbiologic techniques, basic laboratory or epidemiologic training in vector-borne infectious diseases. The goal is to improve the ability of the U.S. public health system to respond to the problem of vector-borne infectious diseases by increasing the number of specialists with demonstrated skills in the public health aspects of vector-borne infectious diseases and to provide them with the essential, pertinent field and research skills.

FTPs should be implemented as new, distinct fellowship positions/tracks in recipient's existing graduate training program. FTPs should be aimed at individuals who wish to pursue an academic career in vector-borne

diseases of public health importance. The objective is to offer a combination of field, laboratory, and research training which will lead to a masters or doctoral degree in entomology, arbovirology, or microbiology. Specific areas of concentration may include mosquito and tick biology, ecology, physiology or behavior, basic arbovirology, serology, laboratory diagnosis, epidemiology, prevention, and control of vector-borne viral and bacterial diseases. Specific areas of research concentration may include entomology, ecology, arbovirology, microbiology, vector-borne bacterial diseases, and vector-borne infectious diseases.

B. Eligible Applicants

Applications may be submitted by public and private non-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private non-profit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian Tribal Governments, Indian Tribes, or Indian Tribal Organizations and Faith-based organizations are eligible to apply.

Assistance will be provided only to organizations with established research and training programs in one or more of the following disciplines: Medical entomology, arbovirology, vector-borne bacterial diseases, and/or vector-borne infectious diseases.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $750,000 is available in FY 2002 to fund approximately three awards. It is expected that the average award will be $250,000, ranging from $200,000 to $300,000. It is expected that the awards will begin on or about August 30, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Recipient cost sharing is required under this program. CDC will provide up to 75 percent of the total cost for items directly related to the support of fellows such as stipends (consistent with Public Health Service policies) and professional travel. CDC funds will not be provided for supplies and equipment or for direct salaries/fringe, travel, space, etc., for recipient's faculty or administrative personnel. In a training grant, recipient's indirect charges are limited to eight percent of direct costs. CDC funds are not intended to supplant recipient's existing infectious disease fellowships, rather they are intended to support new fellowship opportunities that are consistent with the stated purpose of this cooperative agreement program.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Develop and conduct a two to three year FTP that combines entomological, arboviral, microbiological, and bacterial zoonoses field, basic laboratory, and epidemiologic research in prevention and control of vector-borne infectious diseases of public health importance as a distinct and separate track of any existing graduate-level fellowship program.

b. Design and conduct the FTP such that, upon completion of the fellowship, fellows will receive a graduate degree in the field of study.

c. Provide preceptors for training.

d. Develop a fellowship candidate application, review, ranking, and selection process. Based on this process, select applicants to be awarded two-to three-year FTP fellowships.

e. Provide administrative support to fellows during their tenure in the FTP, including the payment of stipends, professional travel, etc. (see Availability of Funds for cost sharing requirements).

f. Assist fellows in publishing and/or otherwise disseminating results of their research.

g. Monitor and evaluate the progress of fellows and progress toward achieving program goals. To measure the overall success of the FTP, establish a mechanism to follow up and report on fellows (e.g., where they work, in what field, etc.) periodically for up to five years after they complete the FTP.

h. Assure appropriate IRB review by all cooperating institutions participating in the project if the fellows research involves the use of human subjects.

2. CDC Activities

a. Provide preceptors and facilities for research training that occurs at CDC facilities. The entomological, arboviral, microbiological, and laboratory or epidemiologic research training may occur at CDC facilities.

b. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Content

Letter of Intent (LOI)

An LOI is optional for this program. The narrative should be no more than 5 double spaced pages, printed on one side, with one-inch margins, and unreduced font. Your letter of intent will be used to assist CDC in planning the evaluation of applications submitted under Program Announcement 02118 and should include (1) name and address of institution; (2) name, address, and telephone number of contact person; and if proposing that research component be conducted at CDC facilities, (3) name and telephone number of CDC scientist agreeing to participate.

Applications

Use the information in this section and the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 10 single spaced pages, printed on one side, with one-inch margins, and unreduced fonts.

Specific Instructions

All pages must be clearly numbered, and a complete index to the application and its appendices must be included. All pages of the application and appendices must be easily run through an automatic document feed copier. Thus, do not bind, staple, or paperclip any pages of any copy of the application, and do not include any bound documents (e.g., pamphlets or other publications) in the appendices. Do not include cardboard, plastic, or other page separators between sections.

The application narrative must not exceed 10 pages (excluding abstract, budget, and appendices). Unless indicated otherwise, all information requested below must appear in the narrative. Materials or information that should be part of the narrative will not be accepted if placed in the appendices. The application narrative must contain the following sections in the order presented below:

1. Abstract

Provide a brief (less than two pages) summary of the proposed FTP.

2. Background and Need

Demonstrate an understanding of the background and need for the FTP. Discuss how your proposed FTP track differs from existing tracks/opportunities in your fellowship program and how your proposed FTP track meets the purpose of this cooperative agreement program.

3. Capacity and Personnel

a. Describe applicant's goals, objectives, and efforts to promote the field of entomology and vector-borne infectious diseases. Describe relevant degree programs and sponsored regular national meetings, seminars, and/or workshops devoted to pertinent issues in academic vector-borne infectious diseases with relevance to public health.

b. Demonstrate applicant's experience in academic vector-borne infectious disease education and training in general, including experience in maintaining programs that lead to awarding of graduate degrees in the field. Describe applicant's existing graduate degree fellowship training programs for entomologists, arbovirologists, and/or bacteriologists.

c. Describe applicant's resources, facilities, and professional personnel that will be involved in conducting the project. Include (in an appendix) curriculum vitae for all professional personnel involved with the project. Describe plans for administration of the project and identify administrative resources/personnel that will be assigned to the project. Provide (in an appendix) letters of support from all key participating non-applicant organizations, individuals, etc., which clearly indicate their commitment to participate as described in the operational plan.

d. If proposing that fellows conduct their field, laboratory, or epidemiologic training at CDC facilities, include a letter of support (in an appendix) from the appropriate CDC scientist (cosigned by their Division/Program Principal Management Officer) that clearly indicates their commitment to participate as described in your application Operational Plan, including agreement to (1) serve as preceptor for the research training and (2) provide space, facilities, supplies, etc., for fellows.

4. Operational Plan

Present a detailed and time phased plan for establishing and conducting the FTP. Describe procedures to accomplish all of the required recipient activities. Describe how the field, laboratory, and research activities will be coordinated within the FTP. Present a plan for monitoring and evaluating the progress of fellows and the progress toward achieving program goals. Describe how the plan will ensure that all fellows become eligible for graduation by the end of fellowship tenure. Describe procedures and plans for assuring any fellow's research that involves the use of human subjects will receive appropriate IRB review by all cooperating institutions participating in the project.

5. Budget

Provide a line item budget and accompanying detailed, line by line justification that demonstrates the request is consistent with the purpose and objectives of this program. Clearly indicate by line item both (a) the full cost and (b) the amount requested from CDC (see Availability of Funds section for further information regarding cost-sharing).

F. Submission and Deadline

Letter of Intent

On or before June 5, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Applications

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at *www.cdc.gov/od/pgo/forminfo.htm.* On or before July 5, 2002, submit the application to the Technical Information Section, 2920 Brandywine Road, Suite 3000 Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (1) or (2) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section ''A. Purpose'' of this announcement.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (15 points)

The extent to which the applicant demonstrates an understanding of the background and need for the FTP. Extent to which they clearly demonstrate that their proposed FTP fellowship positions add to and do not supplant existing positions in their fellowship program. The extent to which they demonstrate how the proposed FTP track meets the Purpose of this cooperative agreement program.

2. Capacity (Total 50 points)

a. Institutional

The extent to which the applicant demonstrates that they have been and are devoted to promoting the field of vector-borne infectious diseases. Extent to which the applicant has promoted the field of vector-borne infectious diseases by conducting regular national meetings and workshops devoted to current topics. The extent to which the applicant documents experience in education and training in entomology, arbovirology, and vector-borne infectious diseases, including documentation of relevant degree programs offered and evidence of experience in successfully preparing students to work in the field. The extent to which the applicant demonstrates significant institutional experience in managing graduate-level fellowship training programs in the area of vector-borne infectious diseases. The extent to which the applicant documents they have a successful existing program(s) in vector-borne infectious diseases. (25 points)

b. Staff and Administrative

The extent to which the applicant describes adequate resources and facilities (clinical, academic, and administrative) for conducting the FTP. The extent to which the applicant documents the past experience and qualifications of their professional personnel who will be involved in the FTP by *curriculum vitae,* publications, etc. If proposing that fellow's research be conducted at CDC facilities, the extent to which applicant includes a letter of support as described in Application Content section 3.b., above (i.e., that is signed by the appropriate CDC officials and that clearly indicates their commitment to participate as proposed in the application). (25 points)

3. Operational Plan (25 points)

The extent to which the proposed operational plan is clear, detailed, time-phased, and meets the purpose and goals of this cooperative agreement program. The extent to which the proposed operational plan addresses all required Recipient Activities. If specific fellow(s) research projects are proposed that involve the use of human subjects, the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Evaluation Plan (5 points)

The extent to which the applicant demonstrates the quality of the proposed plan to monitor, evaluate, and track individual fellows and overall plan to evaluate activities and objectives.

5. Measures of Effectiveness (5 points)

The extent to which the applicant provides Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome.

6. Budget (Not scored)

The extent to which the proposed budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

7. Human Subjects (Not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports.
2. Financial status report no more than 90 days after the end of the budget period.
3. Final financial and performance reports no more than 90 days after the end of the project period.
4. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301 [42 U.S.C. 241] and 317(k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: René Benyard, Grants Management Specialist, Centers for Disease Control and Prevention, Procurement and Grants Office, Acquisition and Assistance, Branch B, 2920 Brandywine Road, Room 3000 Atlanta, GA 30341–4146, Telephone number: (770) 488–2722, E-mail: *bnb8@cdc.gov.*

For program technical assistance, contact: Mel Fernandez, Program Management Official, Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, Division of Vector-Borne Infectious Diseases, P. O. Box 2087, Rampart Road, Foothills Campus, Fort Collins, CO 80521 Telephone: (970) 221–6426, E-mail: *jjernigan@cdc.gov.*

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11710 Filed 5–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The Fifth Annual FDA/OCRA Educational Conference in Irvine, CA on Emerging Regulatory Issues and How to Handle Them; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA), in cosponsorship with the Orange County Regulatory Affairs Discussion Group (OCRA) is announcing its fifth annual educational conference entitled ''Emerging Regulatory Issues and How to Handle Them.'' The public workshop is intended to give the drugs, devices, and biologics industries an opportunity to interact with FDA reviewers and compliance officers from FDA's centers and district offices, as well as other industry experts. The main focus of this interactive workshop is to provide information regarding regulatory changes such as the antibioterrorism initiatives that are taking place within the Federal, State, and local agencies; how these activities are affecting the approval process of product submissions to FDA and Foreign governments; and how companies could prepare for an onslaught of new requirements as a result of the sweeping regulatory changes.

Date and Time: The public workshop will be held on June 3 and 4, 2002, from 7:30 a.m. to 5 p.m.

Location: The public workshop will be held at the Irvine Marriott, 18000 Von Karman Ave., Irvine, CA 92612.

Contact: Ramlah Oma, FDA Los Angeles District Office, Food and Drug Administration, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612, 949–798–7611, FAX 949–798–7656, or OCRA, PMB 624, 5405 Alton Pkwy., suite 5A, Irvine, CA 92604, 949–222–9022, FAX 949–767–5781, http://www.ocra-dg.org.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by May 15, 2002. Until May 15, 2002, registration fees are as follows: Members, $525.00; nonmembers, $600.00; and FDA/government/full-time students with proper identification, $275.00. After May 15, 2002, registration fees will be as follows: Members, $595.00; nonmembers, $675.00; and FDA/government/full-time students with proper identification, $325.00.

Dated: May 3, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11655 Filed 5–9–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. Early Clinical Trials on New Anti-Cancer Agents with Phase I Emphasis.

Date: June 25–26, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd. Bethesda, MD 20892.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11678 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F–Manpower & Training.

Date: June 12–14, 2002.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Ave., Washington, DC 20007.

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, PHS, DHHS, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892–8328, 301–496–7978, bellm@dea.nci.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11681 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Loan Repayment Program (LRP).

Date: June 4, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6116 Executive Blvd, Suite 703, Room 7142, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Suite 703/7145, Rockville, MD 20852, 301/594–9582, vollbert@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11686 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Spores in GYN.

Date: June 3–4, 2002.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Bratin K. Saha, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8123, Bethesda, MD 20892, (301) 402–0371, *sahab@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11687 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Cancer Institute Director's Consumer Liaison Group, May 9, 2002, 2 p.m. to May 9, 2002, 4 p.m., 6116 Executive Blvd, Rockville, MD, 20852 which was published in the **Federal Register** on May 1, 2002, 67 FR 21706.

The meeting is cancelled due to scheduling conflicts.

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11696 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institutes; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Eye Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Eye Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Eye Institute.

Date: June 3–4, 2002.

Open: June 3, 2002, 7:30 a.m. to 9 a.m.

Agenda: Opening remarks by the Acting Scientific Director, Intramural Research Program, on matters concerning the intramural program of the NEI.

Place: 31 Center Drive, Building 31, Conference Room 6A35, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: June 3, 2002, 9 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: 31 Center Drive, Building 31, Conference Room 6A35, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: June 4, 2002, 8 a.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: 31 Center Drive, Building 31, Conference Room 6A35, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Terry M. Green, Secretary, National Institutes of Health, National Eye Institute, Bethesda, MD 20892, 301–451–6763.

Information is also available on the Institute's/Center's home page: *www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committeee Policy.

[FR Doc. 02–11692 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given to the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Demonstration and Education Research.

Date: June 26, 2002.

Time: 8: a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Zoe E. Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, 301–435–0314

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Canter for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11684 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Program Project Review Committee.

Date: June 20, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Jeffrey H Hurst, PHD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung and Blood Institute, National Institutes of Health, Bethesda, MD 20892, 301–435–0303. *hurstj@nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 1, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11688 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Translational Behavioral Science Research Consortia.

Date: June 5, 2002.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20920.

Contact Person: Anne P. Clark, PhD, Chief, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892–7924, 301/435–0310.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 1, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11689 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Global Network for Women's and Children's Health Research (HD–01–024).

Date: June 5, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11679 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. appendix 2), notice is hereby given to the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, RFA: GM–02–002—Summer Research Experiences for Undergraduates.

Date: June 3, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shiva P. Singh, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS.13J, Bethesda, Md 20892, (301) 594–2772, singhs@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11680 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Research Core Center Applications (P30s).

Date: June 11–13, 2002.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 1815 Front Street, Durham, NC 27705.

Contact Person: Ethel B Jackson, DDS, Chief, Scientific Review Branch, Nat'l Institute of Environmental Health Sciences, PO Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–7826.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grant Applications (R13s).

Date: June 14, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grant Applications (R13s).

Date: June 14, 2002.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grant Applications (R13s).

Date: June 18, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associated Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grant Applications (R13s).

Date: June 18, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associated Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basis Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11691 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract

proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Loan Repayment Special Emphasis Panel.

Date: May 10, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11693 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: June 10, 2002.

Open: 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policies.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

Date: June 20–21, 2002.

Open: June 20, 2002, 1 p.m. to 1:30 p.m.

Agenda: To review procedures and discuss policies.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Closed: June 20, 2002, 1:30 PM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Carolyn Miles, PhD, Scientific Research Administrator, Review Branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11694 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Preclinical Toxicity of Iron Chelators.

Date: June 11, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 645, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11695 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Acute Stroke Centers.

Date: May 5–8, 2002.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Katherine Woodbury, PHD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11697 Filed 5–9–02; 8:45 am]

BILLING CODE 4149–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Cancellation of Meeting

Notice is hereby given of the cancellation of the PubMed Central National Advisory Committee, May 6, 2002, 9:30 a.m. to May 6, 2002, 4 p.m., National Library of Medicine, Board Room, Building 38, 2E09, 8600 Rockville Pike, Bethesda, MD, 20894 which was published in the **Federal Register** on March 18, 2002, 67 FR 12032.

The meeting is cancelleld due to the fact that issues of concern to the Committee need further development before the next meeting is convened.

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11682 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library and Informatics Review Committee.

Date: June 13–14, 2002.

Time: June 13, 2002, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Time: June 14, 2002, 8:30 a.m. to 5 p.m.

Agenda: to review and evaluate grant applications.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Merlyn M Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11685 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Molecular Pathobiology Study Section.

Date: June 2–4, 2002.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Elaine Sierra-Rivera, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, 301–435–1779, riverse@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1-Surgery and Bioengineering (33) Cardiovascular Fluid/Valve.

Date: June 2, 2002.

Time: 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Teresa Nesbitt, DVM, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, (301) 435–1172.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Surgery and Bioengineering Study Section.

Date: June 3–4, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Teresa Nesbitt, DVM, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, (301) 435–1172, nesbitt@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1-Special Study Section–W(10).

Date: June 3–4, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.

Name of Committee: Oncological Sciences Integrated Review Group, Pathology B Study Section.
Date: June 5–7, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Medicinal Chemistry Study Section.
Date: June 5–6, 2002.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Ronald J. Dubois, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1—Special Study Section X (10) Ultrasound Technology.
Date: June 5, 2002.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Rosslyn, 1900 North Fort Myer Drive, Arlington, VA 22209.
Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Alcohol and Toxicology Subcommittee 3.
Date: June 6–7, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Christine Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biobehavioral and Behavioral Processes-1.
Date: June 6–7, 2002.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692.

Name of Committee: Genetic Sciences Integrated Review Group, Genetics Study Section.
Date: June 6–8, 2002.
Time: 9 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.
Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, remondid@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular, Cellular and Developmental Neuroscience-1.
Date: June 6–7, 2002.
Time: 9:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Radison Barcelo Hotel, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Metallobiochemistry Study Section.
Date: June 7, 2002.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Phoenix Park Hotel, 520 N. Capital Street, NW., Washington, DC 20001.
Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, 301–435–1723, nelsonja@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, International Cooperative Projects.
Date: June 7, 2002.
Time: 9:30 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Sandy Warren, DMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 2, 2002.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11683 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Advisory Committee, May 20, 2002, 9 AM to May 20, 2002, 3 PM, National Institutes of Health, Two Rockledge Center, Conference Room 9100, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on April 4, 2002, 67 FR 16114.

Additional agenda item. A review of the assurance documents for a research proposal involving the use of human embryonic germ cells will be conducted in compliance with the NIH guidelines. The meeting is open to the public.

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11690 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–19]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 10, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington,

DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 2, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–11321 Filed 5–9–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: Geological Survey, Department of Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement. (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Beartooth Mapping, Inc., Red Lodge, Montana. The purpose of the CRADA is to develop and deploy Internet-based Print-On-Demand capabilities for the on-demand production of image maps based on USGS Digital Orthophotoquad data. Any other organization interested in pursuing the possibility of CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Branch of Business Development, U.S. Geological Survey, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–4621, facsimile (703) 648–4706; Internet ''*bduff@usgs.gov*''.

FOR FURTHER INFORMATION CONTACT: Beth L. Duff, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: March 4, 2002.

Robert A. Lidwin,

Chief of Staff.

[FR Doc. 02–11762 Filed 5–9–02; 8:45 am]

BILLING CODE 4310–Y7–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–415 and 731–TA–933–934]

Polyethylene Therephthalate Film, Sheet and Strip From India and Taaiwan; Notice of Commission Determination To Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a commission hearing.

SUMMARY: Upon request of respondents Polyplex Corporation, Limited, Ester Industries, Ltd., Flex Industries Ltd., Garware Polyester Ltd., Ester International (USA) Ltd., Flex America Inc., Spectrum Marketing Inc. and Global Pet Film Inc. (''Indian Respondents''), the Commission has determined to conduct a portion of its hearing in the above-captioned investigations scheduled for May 9, 2002, *in camera.* See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. *See* Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–3094, e-mail *psultan@usitc.gov.* Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission believes that Indian Respondents have justified the need for a closed session. In these investigations, significant amounts of data concerning the domestic industry are business proprietary. Indian Respondents seek a closed session in order to fully address the issues before the Commission without referring to business proprietary information (''BPI''). In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will begin with public presentations by DuPont Teijin Films, Toray Plastics (America), Inc. and Mitsubishi Polyester Film, LLC, petitioners in these investigations, followed by Indian Respondents. During the public session, the Commission may question the parties following their respective presentations. Next, the hearing will include a 20-minute *in camera* session for a confidential presentation by Indian Respondents and for questions from the Commission relating to the BPI, followed by a 20-minute *in camera* rebuttal presentation by petitioners. For any *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in these investigations. *See* 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall time allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that a portion of the Commission's hearing in Polyethylene Terephthalate Film, Sheet and Strip from India and Taiwan, Inv. Nos. 701–TA–415 and 731–TA–933–934, may be closed to the public to prevent the disclosure of BPI.

Issued: May 7, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11749 Filed 5–9–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Privacy Act of 1974; Revision of a System of Records

AGENCY: International Trade Commission.

ACTION: Request for comments on proposed revision of a system of records.

SUMMARY: Pursuant to 5 U.S.C. 522a(e)(4) of the Privacy Act of 1974, the U.S. International Trade Commission (''Commission'') proposes the following action: revise the existing system of records entitled ''Pay, Leave and Travel Records''.

DATES: Comments must be received no later than June 19, 2002. The proposed revision to the Commission's system of records will become effective on that date unless otherwise published in the **Federal Register**.

ADDRESSES: Written comments should be directed to the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Thomas Bolick, Esq., Office of the General Counsel, U.S. International Trade Commission, tel. 202–205–3107. Hearing impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, this revision to an existing Commission system of records will be reported to the Office of Management and Budget, the Chair of the Committee on Government Reform and Oversight of the House of Representatives, and the Chair of the Committee on Governmental Affairs of the Senate. This revision is in response to a review of the Commission's existing system of records entitled ''Pay, Leave and Travel Records''. The Commission proposes to revise the existing ''Pay, Leave, and Travel Records'' by updating, clarifying, and conforming the information in the Commission's Privacy Act notices to reflect current procedures.

ITC–1

SYSTEM NAME:

Pay, Leave and Travel Records.

SYSTEM LOCATION:

Office of Finance, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; National Business Center, U.S. Department of the Interior, Mail Stop D–2600, 7201 West Mansfield Avenue, Lakewood, CO 80235–2230; General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131; Aldmyr Systems Incorporated, 4200 Parliament Place, Suite 406, Lanham, MD 20706; and in all Commission offices located at the same address as the Office of Finance. For Retired Personnel Files: National Archives and Records Administration National Personnel Records Center (Civilian Personnel Records Center), 111 Winnebago Street, St. Louis, MO 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former Commission employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains various records relating to pay, leave and travel. This includes information such as: Name; date of birth; Social Security number; W–2 address; grade; employing organization; timekeeper number; salary; pay plan; number of hours worked; leave accrual rate, usage, and balances; activity accounting reports; Civil Service Retirement and Federal Retirement System contributions; FICA withholdings; Federal, State, and local tax withholdings; Federal Employee's Group Life Insurance withholdings; Federal Employee's Health Benefits withholdings; charitable deductions; allotments to financial organizations; levy, garnishment, and salary and administrative offset documents; savings bonds allotments; union and management association dues withholding allotments; Combined Federal Campaign and other allotment authorizations; direct deposit information; information on the leave transfer program; travel records; and tax fringe benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. Chapters 53, 55, 57 and 61; 31 U.S.C. 3131 and 3512; Executive Order 9397.

PURPOSE(S):

These records are used for the purposes of administering pay, leave, and travel, activity accounting, and budget preparation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General Routine Uses A–K apply to this system. [1] The pay and leave records are transmitted electronically by the Commission directly to the National Business Center, U.S. Department of the Interior, which provides payroll services. The U.S. Department of the Interior transmits relevant portions of those records as necessary to the following: (a) To the Treasury Department for issuance of pay checks; (b) To the Treasury Department for issuance of savings bonds; (c) To the U.S. Office of Personnel Management (''OPM'') for retirement, health, and life insurance purposes, and to carry out OPM's Government-wide personnel management functions; (d) To the National Finance Center, U.S. Department of Agriculture for the Thrift Savings Plan and Temporary Continuation of Coverage; (e) To the Social Security Administration for reporting wage data in compliance with the Federal Insurance Compensation Act; (f) To the Internal Revenue Service and to State and local tax authorities for tax purposes, including reporting of withholding, audits, inspections, investigations, and similar tax activities; (g) To the Combined Federal Campaign for charitable contribution purposes; and (h) To officials of labor organizations recognized under 5 U.S.C. Chapter 71 for the purpose of identifying Commission employees contributing union dues each pay period and the amount of dues withheld. Travel records are transmitted electronically to Aldmyr Systems Incorporated for management purposes, the National Business Center for accounting and processing purposes, and the San Francisco Finance Center, U.S. Department of Treasury, for issuance of travel reimbursements. Relevant information in this system may be disclosed as necessary to other Federal agencies or Federal contractors with statutory authority to assist in the collection of Commission debts.

Disclosure to Consumer Reporting Agencies:

Disclosures may be made from this system pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f) to ''consumer reporting agencies'' as defined in 31 U.S.C. 3701(a)(3).

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System Storage:

These records are maintained on computer media, on paper in file folders, and on microfiche. The computer records are shared electronically with the Department of the Interior. Travel computer records also are shared electronically with Aldmyr Systems Incorporated.

Retrievability:

These records are retrieved by the name and Social Security Number of the individuals on whom they are maintained.

Safeguards:

These records are maintained in a building with restricted public access. The records in this system are kept in limited access areas within the building. The paper files are maintained in secure

[1] *See* 62 FR 23485, 23495 (Apr. 30, 1997) for a listing of General Routine Uses Applicable to More Than One System of Records.

file cabinets or rooms, and access is limited to persons whose official duties require access. The computer files can be accessed only by authorized individuals through the use of passwords.

Retention and Disposal:

Payroll and salary and administrative offset records will be updated as required in accordance with the National Archives and Records Administration's (NARA's) General Records Schedule 2. Time and attendance records generally will be destroyed after a General Accounting Office (GAO) audit or when six years old, whichever is sooner, in accordance with NARA's General Records Schedule 2. Tax withholding records will be destroyed when four years old in accordance with NARA's General Records Schedule 2. U.S. Savings Bond authorization (SF 1192 or equivalent) will be destroyed when superceded or after separation of employee in accordance with NARA's General Records Schedule 2. Bond registration files, receipt and transmittal files will be destroyed four months after date of issuance of bond in accordance with NARA's General Records Schedule 2. Combined Federal Campaign and other allotments will be destroyed after a GAO audit or when three years old, whichever is sooner. Thrift Savings Plan Election forms will be destroyed when superceded or after separation of employee in accordance with NARA's General Records Schedule 2. Direct Deposit sign-up forms will be destroyed when superceded or after separation of employee in accordance with NARA's General Records Schedule 2. Levy and garnishment records will be destroyed three years after garnishment is terminated. Travel records will be destroyed six years after the period of the account in accordance with NARA's General Records Schedule 9. Records will be disposed of in a secure manner.

System Manager(s) and Address:

Director, Office of Finance, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; Travel and Transportation Management Officer, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Notification Procedure:

Individuals wishing to inquire whether this system of records contains information about them should contact the Privacy Act Officer, Office of the Director of Administration, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment;
5. Dates of travel (for travel records only); and
6. Signature.

Record Access Procedure:

Individuals wishing to request access to their records should contact the Privacy Act Officer, Office of the Director of Administration, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment;
5. Dates of travel (for travel records only); and
6. Signature.

Individuals requesting access must comply with the Commission's Privacy Act regulations on verification of identity (19 CFR part 201).

Contesting Record Procedure:

Individuals wishing to request amendment of their records should contact the Privacy Act Officer, Office of the Director of Administration, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment;
5. Dates of travel (for travel records only); and
6. Signature.

Individuals requesting access must comply with the Commission's Privacy Act regulations on verification of identity (19 CFR part 201).

Record Source Categories:

Information in this system comes from official personnel documents, the individual to whom the record pertains, and Commission officials responsible for pay, leave, travel and activity reporting requirements.

Issued: May 7, 2002.
By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11750 Filed 5–9–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Cancellation of Environmental Impact Statement Process Criminal Alien Requirement Phase III—Arizona and California

One June 13, 2000, the U.S. Department of Justice, Federal Bureau of Prisons (Bureau) issued a notice in the Commerce Business Daily stating that the Bureau would be soliciting for Contractor-Owned and Contractor-Operated correctional facilities to house up to 4,500 low security, adult male, non-U.S. citizen criminal aliens within the States of California and/or Arizona. The solicitation was subsequently issued on November 13, 2000 and proposals were submitted by prospective contractors to the Bureau by January 12, 2001. At that time, sites were offered to the Bureau for consideration in: Eloy, Arizona; Florence, Arizona; Kingman, Arizona; Safford, Arizona; San Luis, Arizona; Wilcox, Arizona; Arvin, California; Barstow, California; Orange Cove, California; El Centro, California; and Wasco, California. In support of this undertaking, and in compliance with the National Environmental Policy Act, the Bureau initiated preparation of a Draft Environmental Impact Statement (EIS). Draft EIS preparation began on September 19, 2000 with publication in the **Federal Register** of a Notice of Intent to prepare a Draft EIS followed by public scoping meetings held in Arizona and California during October 2000. Since that time, the Bureau has been preparing the Draft EIS which would serve to study the potential environmental impacts associated with the proposed action at each of the alternative locations.

On March 15, 2002, the Bureau issued Amendment No. 6 to RFP No. PCC–0007 cancelling the overall solicitation. Cancellation of the solicitation was deemed appropriate because the Bureau no longer has a need for the service. Since January 2001 when proposals were submitted to the Bureau, the Bureau's requirements changed. New population projections indicate a reduced rate of growth of the federal inmate population. Therefore, the Bureau has determined that it is in the best interest of the Federal Government not to proceed with Solicitation No. PCC–0007 or to complete preparation of the Draft EIS. This decision is consistent with the Bureau's strategy of utilizing private corrections contractors to allow flexibility in managing its bedspace capacity needs in a reasonable and cost-

effective manner. Questions concerning cancellation of the Draft EIS process should be directed to: David J. Dorworth, Chief, Site Selection & Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Tel: 202–514–6470/Fax: 202–616–6024.

Thank you for your interest.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 02–11713 Filed 5–9–02; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Veterans' Employment and Training Services

On April 22, 2002, the Secretary of Labor issued a memorandum to the Assistant Secretary for Veterans' Employment and Training Services delegating authority and assigning responsibility for carrying out the functions and authority vested in the Secretary of Labor pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103–353, 38 U.S.C. 4301–4333, and Section 3 of the Veterans Employment Opportunities Act of 1998, Pub. L. 105–339, 5 U.S.C. 3330a. A copy of that memorandum is annexed hereto as an Appendix.

FOR FURTHER INFORMATION CONTACT: Nick Dawson, Veterans' Employment and Training Services, at (202) 693–4711. This is not a toll-free number.

Signed in Washington, DC, this 3rd day of May 2002.

Eugene Scalia,

Solicitor of Labor.

April 22, 2002.

Memorandum for Frederico Juarbe, Jr.
Assistant Secretary for Veterans' Employment and Training Services
From: Elaine Chao
Subject: Specific Delegation of Authority to the Assistant Secretary for Veterans' Employment and Training Services

Effective immediately, the Assistant Secretary for Veterans' Employment and Training Services is hereby delegated authority and assigned responsibilities for carrying out the functions and authority vested in the Secretary of Labor pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Pub. L. 103–353, 38 U.S.C. 4301–4333, and Section 3 of the Veterans Employment Opportunities Act of 1998 (VEOA), Pub. L. 105–339, 5 U.S.C. 3330a, except with regard to the preparation of reports and recommendations to the President and the Congress.

In addition, and also effective immediately, the Assistant Secretary for Veterans' Employment and Training Services is hereby delegated authority and assigned responsibility to invoke all appropriate claims of governmental privilege arising from the above functions of the Veterans' Employment and Training Services, following his personal consideration of the matter and in accordance with the following guidelines:

(a) Informant's Privilege (to protect from disclosure the identity of any person who has provided information to the Veterans' Employment and Training Services under USERRA and Section 3 of the VEOA): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter may: (1) Interfere with the Veterans' Employment and Training Services' investigation or enforcement of a particular statue for which the Veterans' Employment and Training Services exercises investigative or enforcement authority; (2) adversely affect persons who have provided information to the Veterans' Employment and Training Services; or (3) deter other persons from reporting violations of the statutes.

(b) Deliberative Process Privilege (to withhold information which may disclose pre-decisional intra-agency or inter-agency deliberations, including the analysis and evaluation of fact, written summaries of factual evidence, and recommendations, opinions or advice on legal or policy matters in cases arising under USERRA and Section 3 of the VEOA): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter would have an inhibiting effect on the agency's decision-making processes.

(c) Privilege for Investigational Files Compiled for Law Enforcement Purposes (to withhold information which may reveal the Veterans' Employment and Training Services' confidential investigative techniques and procedures): The investigative file privilege may be asserted where the Assistant Secretary has determined the disclosure of the privileged matter may have an adverse impact upon the Veterans' Employment and Training Services' enforcement of USERRA and Section 3 of the VEOA by: (1) Disclosing investigative techniques and methodologies; (2) deterring persons from providing information to the Veterans's Employment and Training Services; (3) prematurely revealing the facts of the Veterans Employment and Training Services' case; or (4) disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(d) Prior to filing a formal claim of privilege, the Assistant Secretary shall personally review all documents sought to be withheld (or, in case where the volume is so large that all of them cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents), together with a description or summary of the litigation with which the disclosures is sought.

(e) In asserting a claim of governmental privilege, the Assistant Secretary may ask the Solicitor of Labor, or the Solicitor's representative, to file any necessary legal papers or documents.

[FR Doc. 02–11706 Filed 5–9–02; 8:45 am]

BILLING CODE 4510–79–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed collection extension of the Work Opportunity Tax Credit (WOTC) Program and the Welfare-to-Work (WtW) Tax Credit's reporting and administrative forms, the Third Edition of ETA Handbook No. 408, the proposed Training and Employment Guidance Letter (TEGL), ''Planning Guidelines for Employment Service (ES) Fiscal Year 2002 Cost Reimbursable Grants for the Work Opportunity Tax Credit Program and the Welfare-to-Work Tax Credit,'' and the Technical Assistance (TA) and Review Guide. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before July 9, 2002.

ADDRESSES: Gay M. Gilbert, Division Chief, U.S. Employment Service/ALMIS, Office of Workforce Security, U.S. Department Of Labor, 200 Constitution Ave., NW., Room C–4514, Washington, DC 20210, (202) 693–3428

(this is not a toll-free number) and, at: ggilbert@doleta.gov and/or fax number: 202/693–2874. The proposed program forms and related materials can also be accessed at: *http://www.usworkforce.org*

SUPPLEMENTARY INFORMATION:

I.

Data collected on the WOTC and the WtW Tax Credits will be collected by the State Workforce Agencies (SWAs) and provided to the U.S. Employment Service/ALMIS Division, Office of Workforce Security, Washington, DC, through the appropriate Department of Labor regional offices. The data will be used, primarily, to supplement IRS Form 8850. This data will help expedite the processing of employer requests for Certifications generated through IRS Form 8850 or issuance of Conditional Certifications (CCs) and employer requests for Certifications as a result of hiring individuals who have received SWAs' or participating agencies' generated CCs. The data will also help streamline SWAs' mandated verification activities, aid and expedite the preparation of the quarterly reports, and provide a significant source of information for the Secretary's Annual Report to Congress on the WOTC program. The data recorded through the use of these forms will also help in the preparation of an annual report to the Committee House of Ways and Means of the U.S. House of Representatives. Also, the plans submitted by the states will tell the regional and national offices how the states plan to administer the WOTC and the WtW tax credits and use the funds allocated to them. Finally, the data obtained through the use of the Technical Assistance and Review Guide will help the Regional Coordinators determine if the states are administering the tax credits in compliance with the reauthorizing legislation, the IRS Code of 1986, as amended and the Program Handbook. If the findings show any deviation from the plan or deficiencies, the Regional Coordinator will be able to plan, coordinate and deliver remedial assistance with the National and corresponding State Coordinators to affected existing and new staff members.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

- The Work Opportunity and Welfare-to-Work Tax Credits' reporting and administrative forms expire June 30, 2002. Pub. L. 107–147 reauthorized these two tax credits through December 31, 2003. Because the Congress reauthorizes these tax credits regularly for periods that range between one and three years, we are requesting a 3-year expiration date from approval date to continue the existing collection of information.
- Further, the Government Paperwork Elimination Act (GPEA) of 1998 (Public Law 105–277) requires that, when feasible, Federal agencies design and implement the use of automated systems that facilitate the electronic signature and filing of forms (by participants) to conduct official business with the public by 2003. To comply with this requirement, ETA is currently working with a contractor to develop an electronic reporting system for the tax credits' program. The electronic system will transfer the WOTC and WtW quarterly reports to ETA's Enterprise Information Management System (EIMS). The EIMS is a web-based system that will allow states to meet the reporting responsibilities in a more efficient manner while reducing the reporting burden on the state, regional and national levels. Through this system, states will have the choice of manually entering or electronically uploading the required quarterly data for Reports 1, 2 and 3 (ETA Forms 9057, 9058 and 9059). Implementation of the new system is targeted for the reports due in the regional offices 25 days after the end of the July 1, 2002 to September 30, 2002 period. The new electronic reporting system is expected to reduce burden hours by 25 percent.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Work Opportunity Tax Credit (WOTC) and Welfare-to-Work Tax (WtW) Credit.

OMB Number: 1205–0371.

Agency Number: ETA Forms 9057–59; 9061–63 and 9065.

Affected Public: State, Local or Tribal Government.

State Burden:

Cite/reference	Total respondents	Frequency	Total [1] responses	Average time/ response	Burden [2]
Form 9057	52	Quarterly	208	6 hours	1248
Form 9058	52	Quarterly	208	6 hours	1248
Form 9059	52	Quarterly	208	6 hours	1248
Form 9062	52	As needed	40	6 hours	240
Form 9063	52	As needed	1000	45 mins	750
Form 9065	52	Quarterly	208	6 hours	1248
Record keeping	52	Annually	52	931 hours	41844
TA & Review Guide	52	Annually	52	8 hours	416
TEGL No. ## Planning Guidance	52	One time	52	8 hours	416
TEGL No. ## Planning Guidance Modification.	52	As needed	52	1 hour	52
Total			2080		[3] 49910

[1] Numbers of ''Total Responses'' and ''Average Time/Response'' are only estimates and were obtained by calling several States and asking for the best possible estimates.

[2] Also, these numbers represent a 25% decrease in burden hours from those submitted for the 2001 OMB Package. The decrease is the direct result of the new Electronic Information Systems (EIMS) to be in place for the Fourth Quarter Reports due 25 days after the end of the July 1, 2001—September 20, 2002 period.

[3] This grand total includes the 1200 burden hours for ETA Form 9061.

EMPLOYER/CONSULTANTS AND JOB SEEKERS

Cite/ reference	Total respondents	Frequency	Total responses	Burden
Form 9061	200	5 days	6 hours	1200

Total Burden Hours: 49910.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/ maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of this information collection request. They will also become a matter of public record.

Dated: April 30, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security, Labor.

[FR Doc. 02–11705 Filed 5–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ020001 (Mar. 1, 2002)
NJ020002 (Mar. 1, 2002)
NJ020003 (Mar. 1, 2002)
NJ020004 (Mar. 1, 2002)
NJ020005 (Mar. 1, 2002)
NJ020007 (Mar. 1, 2002)

Volume II

None

Volume III

Florida
FL020001 (Mar. 1, 2002)
FL020014 (Mar. 1, 2002)
FL020015 (Mar. 1, 2002)
FL020017 (Mar. 1, 2002)
FL020032 (Mar. 1, 2002)
Tennessee
TN020001 (Mar. 1, 2002)
TN020002 (Mar. 1, 2002)
TN020005 (Mar. 1, 2002)
TN020045 (Mar. 1, 2002)
TN020048 (Mar. 1, 2002)
TN020062 (Mar. 1, 2002)

Volume IV

None

Volume V

Kansas
KS020006 (Mar. 1, 2002)
KS020007 (Mar. 1, 2002)
KS020009 (Mar. 1, 2002)
KS020010 (Mar. 1, 2002)
KS020011 (Mar. 1, 2002)
KS020013 (Mar. 1, 2002)
KS020016 (Mar. 1, 2002)
KS020017 (Mar. 1, 2002)
KS020025 (Mar. 1, 2002)
KS020026 (Mar. 1, 2002)
KS020029 (Mar. 1, 2002)
KS020035 (Mar. 1, 2002)
KS020069 (Mar. 1, 2002)
KS020070 (Mar. 1, 2002)
Missouri
MO020001 (Mar. 1, 2002)
MO020010 (Mar. 1, 2002)
MO020012 (Mar. 1, 2002)

MO020057 (Mar. 1, 2002)
Oklahoma
OK020013 (Mar. 1, 2002)
OK020014 (Mar. 1, 2002)
Texas
TX020007 (Mar. 1, 2002)
TX020010 (Mar. 1, 2002)
TX020033 (Mar. 1, 2002)
TX020034 (Mar. 1, 2002)
TX020035 (Mar. 1, 2002)
TX020037 (Mar. 1, 2002)
TX020069 (Mar. 1, 2002)
TX020085 (Mar. 1, 2002)

Volume VI

Alaska
AK020001 (Mar. 1, 2002)
Idaho
ID020001 (Mar. 1, 2002)
ID020002 (Mar. 1, 2002)
ID020003 (Mar. 1, 2002)
ID020004 (Mar. 1, 2002)
ID020013 (Mar. 1, 2002)
ID020014 (Mar. 1, 2002)
North Dakota
ND020003 (Mar. 1, 2002)
ND020004 (Mar. 1, 2002)
ND020007 (Mar. 1, 2002)
Washington
WA020001 (Mar. 1, 2002)
WA020002 (Mar. 1, 2002)
WA020003 (Mar. 1, 2002)
WA020007 (Mar. 1, 2002)
WA020008 (Mar. 1, 2002)
WA020011 (Mar. 1, 2002)
WA020013 (Mar. 1, 2002)

Volume VII

Arizona
AZ020001 (Mar. 1, 2002)
AZ020002 (Mar. 1, 2002)
AZ020003 (Mar. 1, 2002)
AZ020004 (Mar. 1, 2002)
AZ020005 (Mar. 1, 2002)
AZ020006 (Mar. 1, 2002)
AZ020007 (Mar. 1, 2002)
AZ020012 (Mar. 1, 2002)
AZ020014 (Mar. 1, 2002)
California
CA020001 (Mar. 1, 2002)
CA020002 (Mar. 1, 2002)
CA020004 (Mar. 1, 2002)
CA020009 (Mar. 1, 2002)
CA020019 (Mar. 1, 2002)
CA020023 (Mar. 1, 2002)
CA020025 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
CA020029 (Mar. 1, 2002)
CA020030 (Mar. 1, 2002)
CA020031 (Mar. 1, 2002)
CA020033 (Mar. 1, 2002)
CA020035 (Mar. 1, 2002)
CA020036 (Mar. 1, 2002)
CA020037 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.*

They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 2nd day of May, 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–11369 Filed 5–9–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term ''FR Notice'' appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated at Arlington, Virginia this 6th day of May 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–2001–011–C.
FR Notice: 66 FR 18659.
Petitioner: C.W. Mining Company (Co-op Mine).
Regulation Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal is to use a 480-volt, wye connected, (275 kW/356 kVA) diesel-powered generator for utility power and to move electrically powered mining equipment in and around the mine. This is considered an acceptable alternative method for the Bear Canyon Mine #1, the Canyon Mine #2, and the Bear Canyon Mine #3. MSHA grants the petition for modification for the 480-volt, three-phase, 275 kW/356 kVA diesel powered generator (DPG) set supplying power to a three-phase delta-wye connected 285 kVA transformer and three-phase 480- and 995-volt power circuits for the Bear Canyon Mine #1, the Canyon Mine #2, and the Bear Canyon Mine #3 with conditions.

Docket No.: M–2001–012–C.
FR Notice: 66 FR 18659.
Petitioner: C.W. Mining Company (Co-op Mine).
Regulation Affected: 30 CFR 75.901.
Summary of Findings: Petitioner's proposal is to use a 480-volt, wye connected, (275 kW/356 kVA) diesel-powered generator for utility power and to move electrically powered mining equipment in and around the mine. This is considered an acceptable alternative method for the Bear Canyon Mine #1, the Canyon Mine #2, and the Bear Canyon Mine #3. MSHA grants the petition for modification for the 480-volt, three-phase, 275 kW/356 kVA diesel powered generator (DPG) set supplying power to a three-phase delta-wye connected 285 kVA transformer and three-phase 480- and 995-volt power circuits for the Bear Canyon Mine #1, the Canyon Mine #2, and the Bear Canyon Mine #3 with conditions.

Docket No.: M–2001–014– and M–2001–015–C.
FR Notice: 66 FR 28932.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to seal the Pittsburgh Coal Seam from the surrounding strata at the abandoned wells using technology developed through its well-plugging program instead of maintaining barriers around the oil and gas wells. This is considered an acceptable alternative method for the Blacksburg No. 2 Mine and the Robinson Run No. 95 Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil or gas wells penetrating the Pittsburgh seam and other mineable coal seams with conditions.

Docket No.: M–2001–017–C.
FR Notice: 66 FR 28933.
Petitioner: Goodin Creek Contracting, Inc.
Regulation Affected: 30 CFR 75.380(f)(4)(i).
Summary of Findings: Petitioner's proposal is to use two-ten pound fire extinguishers for a total of twenty pounds on each Mescher tractor that would be readily accessible to the equipment operator, and instruct the operator to check the fire extinguisher daily before entering the mine. This is considered an acceptable alternative method for the Goodin Creek #2 Mine. MSHA grants the petition for modification for Mescher three-wheel tractors to be operated in the primary intake escapeway at the Goodin Creek #2 Mine with conditions.

Docket No.: M–2001–018–C.
FR Notice: 66 FR 28933.
Petitioner: Excel Mining, LLC.
Regulation Affected: 30 CFR 75.388(a)(i).
Summary of Findings: Petitioner's proposal is to drill boreholes in each advancing working place when the working place approaches to within twenty-five (25) feet of certain areas of the mine as shown by the surveys certified by a registered engineer or registered surveyor unless the area has been pre-shift examined. This is considered an acceptable alternative method for the Excel Mine. MSHA grants the petition for modification for the use of administrative and engineering controls in lieu of drilling boreholes when the working place approaches to within 25 feet of an adjacent panel that cannot be pre-shift examined at the Excel Mine with conditions.

Docket No.: M–2001–021–C.
FR Notice: 66 FR 28933.
Petitioner: Brushy Creek Coal Company.
Regulation Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal is to conduct pre-shift examinations for water and gas levels at the seals of the #6 slope. This is considered an acceptable alternative method for the Brushy Creek Mine. MSHA grants the petition for modification to allow evaluation of the Number 6 Seam seals off the shaft at the Brushy Creek Mine with conditions.

Docket No.: M–2001–022–C.
FR Notice: 66 FR 28933.
Petitioner: Cook and Sons Mining, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded locking device on permissible mobile battery-powered machines instead using padlocks to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Premium Mine and the Sandlick Mine. MSHA grants the petition for modification for the use Premium Mine and Sandlick Mine with conditions.

Docket No.: M–2001–025–C.
FR Notice: 66 FR 28934.
Petitioner: Excel Mining, LLC.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed locking screw threaded through a steel bracket or spring-loaded locking devices in lieu of padlocks on battery plugs for powering permissible underground mining equipment to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentional loosening, and place warning tags on all battery connectors on the battery-powered equipment that states: ''DO NOT DISENGAGE PLUGS UNDER LOAD''. This is considered an acceptable alternative method for the Mine No. 2 and Mine No. 3. MSHA grants the petition for modification for the Mine No. 2 and the Mine No. 3 with conditions.

Docket No.: M–2001–026–C.
FR Notice: 66 FR 30232.
Petitioner: Fork Creek Mining Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use belt air to ventilate active working places and install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to carry intake air to a working place. This is considered an acceptable alternative method for Tiny Creek No. 2 Mine. MSHA grants the petition for modification for the Tiny Creek No. 2 Mine with conditions.

Docket No.: M–2001–030–C.
FR Notice: 66 FR 30232.
Petitioner: Independence Coal Company, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded device instead of a padlock on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles. This is considered an acceptable alternative method for the Justice #1 Mine, Shumate Powellton Mine, Shumate Upper Cedar Grove Mine, Jack's Branch Buffalo CK Mine, Twilight-Chilton R. Mine, Cedar Grove Mine No. 1, Tunnel Mine, and Allegiance Mine. MSHA grants the petition for modification for the Justice #1 Mine, Shumate Powellton Mine, Shumate Upper Cedar Grove Mine, Jack's Branch Buffalo CK Mine, Twilight-Chilton R. Mine, Cedar Grove Mine No. 1, Tunnel Mine, and Allegiance Mine with conditions.

Docket No.: M–2001–039–C.
FR Notice: 66 FR 30233.
Petitioner: Black Beauty Coal Company.
Regulation Affected: 30 CFR 75.1002.

Summary of Findings: Petitioner's request is to amend the proposed decision and order (PDO) for its previously granted petition, docket number M–2000–138–C. The petitioner requests that paragraph 1 be changed to paragraph 1a and add a paragraph 1b, and that paragraphs 16b, 25, 28, and 32 be amended, and that a paragraph 34 be added. The petitioner's amended alternative method is essentially the same as that approved in the previous PDO for use of the prototype high-voltage continuous miner at the Black Beauty Coal Company's Riola #1 mine, but there are significant differences in the language concerning the method of powering the tram motors of the miner during equipment moves. Other wording changes and additions more closely reflect the electrical design of the Joy 14 CM high-voltage continuous miner and the method used to power the miner during equipment moves. This is considered an acceptable alternative method for the Riola #1 Mine. MSHA grants the petition for modification for the 2400-volt high-voltage continuous miner at the Riola #1 Mine with conditions.

Docket No.: M–2001–040–C.
FR Notice: 66 FR 30233.
Petitioner: Peabody Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage 2400-volt trailing cables at the working continuous miner section(s) and use a portable transformer to supply power to the 995-volt tramming motors on the continuous miner when the miner is trammed into, out of, or around the mine. This is considered an acceptable alternative method for the Highland Mine. MSHA grants the petition for modification for the 2400-volt high-voltage continuous miner(s) at the Highland Mine with conditions.

Docket No.: M–2001–041–C.
FR Notice: 66 FR 30233.
Petitioner: Appalachian Eagle, Inc.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine through oil and gas wells. This is considered an acceptable alternative method for the Mine No. 1. MSHA grants the petition for modification for the use Mine No. 1 with conditions.

Docket No.: M–2001–043–C.
FR Notice: 66 FR 30234.
Petitioner: West Ridge Resources, Inc.
Regulation Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal is to use high-voltage cables for longwall equipment with an insulated internal ground check conductor smaller than a No. 10 (AWG), but not smaller than a No. 16 (AWG). This is considered an acceptable alternative method for the West Ridge Mine. MSHA grants the petition for modification for the use West Ridge Mine with conditions.

Docket No.: M–2001–044–C.
FR Notice: 66 FR 30234.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage 4160-volt equipment inby the last open crosscut at the working longwall sections. This is considered an acceptable alternative method for the Skyline Mine #3. On July 12, 2001, MSHA grants the petition for modification for the 4160-volt longwall system for the Skyline Mine #3 with conditions. On July 12, 2001, MSHA grants ''Application for Relief to Give Effect'' to July 12, 2001.

Docket No.: M–2001–048–C.
FR Notice: 66 FR 30234.
Petitioner: Appalachian Eagle, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded device instead of padlocks on battery-powered machines to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Mine #1. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs at the Mine # 1 with conditions.

Docket No.: M–2001–049–C.
FR Notice: 66 FR 30234.
Petitioner: Coastal Coal West Virginia, LLC.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use belt haulage entries to ventilate active working places and install a carbon monoxide monitoring system as an early warning system in all belt entries used to course intake air to a working place. This is considered an acceptable alternative method for the Whitetail K-Mine. MSHA grants the petition for modification to allow air coursed through conveyor belt haulage entries to be used to ventilate working places at the Whitetail K-Mine with conditions.

Docket No.: M–2001–050–C.
FR Notice: 66 FR 30234.
Petitioner: Mingo Logan Coal Company.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine through gas wells. This is considered an acceptable alternative method for the Mountaineer Alma-A-Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil and gas wells penetrating the coal seam being mined and other mineable coal seams using continuous miners, conventional mining or longwall mining methods for the Mountaineer Alma-A-Mine with conditions.

Docket No.: M–2001–051–C.
FR Notice: 66 FR 34464.
Petitioner: Primrose Coal Company #2.
Regulation Affected: 30 CFR 75.1200(d) and (i).
Summary of Findings: Petitioner's proposal is use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope, and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. This is considered an acceptable alternative method for the Buck Mountain Vein Slope Mine. MSHA grants the petition for modification for the Buck Mountain Vein Slope Mine with conditions.

Docket No.: M–2001–053–C.
FR Notice: 66 FR 34465.
Petitioner: Coastal Coal Company, LLC.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded device instead of padlock on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Red Star Mine No.1, Hip-High Mine No. 1, Lynn Branch Mine No. 1, Black Thunder Mine No. 3, and the Koyle Branch Mine No. 1. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs on mobile battery-powered equipment at the Red Star Mine No.1, Hip-High Mine

No. 1, Lynn Branch Mine No. 1, Black Thunder Mine No. 3, and the Koyle Branch Mine No. 1. with conditions.

Docket No.: M–2001–054–C.
FR Notice: 66 FR 34465.
Petitioner: Coastal Coal Company, LLC.
Regulation Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal is to use contactors in lieu of circuit breakers to provide protection against undervoltage, grounded phase, short circuit, and over-current. This is considered an acceptable alternative method for the Red Star Mine No.1, Hip-High Mine No. 1, Lynn Branch Mine No. 1, Black Thunder Mine No. 3, and the Koyle Branch Mine No. 1. MSHA grants the petition for modification to allow the use of contractors to provide undervoltage, grounded phase, and overload protection and monitor the grounding conductors for 480-volt belt conveyor drive motors and water pump motors greater than 5 horsepower located in the Red Star Mine No.1, Hip-High Mine No. 1, Lynn Branch Mine No. 1, Black Thunder Mine No. 3, and the Koyle Branch Mine No. 1 with conditions.

Docket No.: M–2001–055–C.
FR Notice: 66 FR 34465.
Petitioner: Mountaineer Coal Development Company. d.b.a. Marrowbone Development Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use 2400-volt AC-powered continuous mining equipment at its Dingess Tunnel No. 1 Deep Mine. This is considered an acceptable alternative method for the Dingess Tunnel No. 1 Deep Mine. On October 22, 2001, MSHA grants the petition for modification for the Dingess Tunnel No. 1 Deep Mine with conditions. On October 26, 2001, MSHA grants ''Application for Relief to Give Effect'' to October 22, 2001.

Docket No.: M–2001–056–C.
FR Notice: 66 FR 34465.
Petitioner: Speed Mining, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage 4160-volt cables on longwall equipment at its American Eagle Mine. This is considered an acceptable alternative method for the American Eagle Mine. MSHA grants the petition for modification for the American Eagle Mine with conditions.

Docket No.: M–2001–059–C.
FR Notice: 66 FR 34465.
Petitioner: Monterey Coal Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use belt entry to ventilate active working places. This is considered an acceptable alternative method for the No. 1 Mine. MSHA grants the petition for modification to allow air coursed through conveyor belt haulage entries to be used to ventilate active working places in longwall development sections and in retreating longwall panels, from a point not less than 8,000 feet from the panel mouth at the No. 1 Mine with conditions.

Docket No.: M–2001–060–C.
FR Notice: 66 FR 34466.
Petitioner: Peabody Energy, Rivers Edge Mining, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage 2400-volt trailing cables in the last open crosscut at the working continuous miners section(s).

This is considered an acceptable alternative method for the Rivers Edge Mine. MSHA grants the petition for modification for the Rivers Edge Mine with conditions.

Docket No.: M–2001–062–C.
FR Notice: 66 FR 34466.
Petitioner: Eastern Associated Coal Corporation.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to clean out and prepare oil and gas wells for plugging and to plug all wells that are encountered during normal operations. This is considered an acceptable alternative method for the Harris No. 1 Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil or gas wells penetrating the Eagle Coal Seam and other mineable coal seams using continuous miners, conventional mining or longwall methods at the Harris No. 1 Mine with conditions.

Docket No.: M–2001–066–C.
FR Notice: 66 FR 38749.
Petitioner: Branham & Baker Underground Corp.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded device instead of a padlock on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Mine #23. MSHA grants the petition for modification for the Mine #23 with conditions.

Docket No.: M–2001–067–C.
FR Notice: 66 FR 38749.
Petitioner: Long Fork Development, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded locking device in lieu of a padlock on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the No. 6 Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs at the No. 6 Mine with conditions.

Docket No.: M–2001–068–C.
FR Notice: 66 FR 38749.
Petitioner: Energy West Mining Company.
Regulation Affected: 30 CFR 75.364(b)(1).
Summary of Findings: Petitioner's proposal is to establish evaluation points instead of traveling an area from the top of the Cowin Raise for a distance of approximately three hundred (300) feet inby the intake air course, due to deteriorating adverse roof, deep water conditions. This is considered an acceptable alternative method for the Deer Creek Mine. MSHA grants the petition for modification for evaluation of the unsafe-for-examination intake air course segment (approximately 300 feet) known as the Cowin Raise Area at the Deer Creek Mine with conditions.

Docket No.: M–2001–070–C.
FR Notice: 66 FR 38749.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal is to use a high-voltage 4160-volt cable with in internal ground check conductor smaller than #10 A.W.G. as part of its longwall mining system. This is considered an acceptable alternative method for the Buchanan No. 1 Mine. MSHA grants the petition for modification for the Buchanan No. 1 Mine with conditions.

Docket No.: M–2001–071–C.
FR Notice: 66 FR 38749.
Petitioner: American Energy Corporation.
Regulation Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal is to use a high-voltage cable

with an internal ground check conductor smaller than No. 10 A.W.G. as part of its longwall mining system. This is considered an acceptable alternative method for the Century Mine. MSHA grants the petition for modification for the use of high-voltage system at the with conditions.

Docket No.: M–2001–072–C.
FR Notice: 66 FR 38750.
Petitioner: American Energy Corporation.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage 4160-volt cables inby the last open crosscut. This is considered an acceptable alternative method for the Century Mine. MSHA grants the petition for modification for the Century Mine with conditions.

Docket No.: M–2001–076–C.
FR Notice: 66 FR 41891.
Petitioner: Coastal Coal–West Virginia, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to continuous mining machines with nominal voltage of the power circuits not to exceed 2400-volts. This is considered an acceptable alternative method for the Popular Ridge Mine. On October 22, 2001, MSHA grants the petition for modification for the Popular Ridge Mine with conditions. On October 23, 2001, MSHA grants ''Application for Relief to Give Effect to October 22, 2001.

Docket No.: M–2001–079–C.
FR Notice: 66 FR 41892.
Petitioner: Drummond Company, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to continuous mining machines with nominal voltage of power circuits not to exceed 2,400 volts at its Shoal Mine. This is considered an acceptable alternative method for the Shoal Creek Mine. MSHA grants the petition for modification for the use the 2,400-volt high-voltage continuous miner(s) at the Shoal Creek Mine with conditions.

Docket No.: M–2001–080–C.
FR Notice: 66 FR 41892.
Petitioner: Beech Fork Processing, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded devices instead of padlocks on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the No. 5 Mine. MSHA grants the petition for modification for the No. 5 Mine with conditions.

Docket No.: M–2000–040–C.
FR Notice: 65 FR 31610.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use the belt entry as the return entry during two-entry longwall panel development, and permit the operator the option of using the belt haulage entry as an intake entry for additional face ventilation during longwall panel retreat mining. The petitioner proposes to install a low-level carbon monoxide monitoring or equivalent product of combustion detection system in all longwall panel belt entries used as an intake or return air course in the primary intake entry. This is considered an acceptable alternative method for the Skyline Mine No. 3. MSHA grants the petition for modification for the Skyline Mine No. 3 with conditions.

Docket No.: M–2000–041–C.
FR Notice: 65 FR 31610.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.352.
Summary of Findings: Petitioner's proposal is to use the belt entry as the return entry during two-entry longwall panel development, and to allow the operator the option of using the belt haulage entry as an intake entry for additional face ventilation during longwall panel retreat mining. The petitioner proposes to install a low-level carbon monoxide or equivalent product of combustion detection system in all longwall panel belt entries used as an intake or return air course and in the primary intake entry. This is considered an acceptable alternative method for the Skyline Mine No. 3. MSHA grants the petition for modification for the Skyline Mine No. 3 with conditions.

Docket No.: M–2000–116–C.
FR Notice: 65 FR 58820.
Petitioner: San Juan Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage (4,160-volt) cables in by the last open crosscut and within 150 feet of pillar workings. This is considered an acceptable alternative method for the San Juan South Underground Mine. MSHA grants the petition for modification for the San Juan South Underground Mine with conditions.

Docket No.: M–2000–123–C.
FR Notice: 65 FR 64261.
Petitioner: Dominion Coal Corporation.
Regulation Affected: 30 CFR 75.204(a)(1).
Summary of Findings: Petitioner's proposal is to use special purpose roof bolts that meet the requirements of ASTM F432–83 and ASTM F432–88, instead of using ASTM F432–95 roof bolts. This is considered an acceptable alternative method for the Dominion Mine No. 16, Dominion Mine No. 22, Dominion Mine No. 34, and Dominion Mine No. 36. MSHA grants the petition for modification for the use of Ingersoll Rand's Dyna-Rok roof bolts manufactured under the ASTM Standards F432–83 and F432–88 at the Dominion Mine No. 16, Dominion Mine No. 22, Dominion Mine No. 34, and Dominion Mine No. 36 with conditions.

Docket No.: M–2000–143–C.
FR Notice: 65 FR 75974.
Petitioner: San Juan Coal Company.
Regulation Affected: 30 CFR 75.1909(b)(6).
Summary of Findings: Petitioner's proposal is to operate its diesel road grader without front wheel brakes at a maximum speed of 10 miles per hour, lower the moldboard to increase stopping capability in emergency situations, and train grader operators on how to recognize the appropriate speeds for different road and slope conditions. This is considered an acceptable alternative method for the San Juan South Underground Mine and the San Juan Deep Mine. MSHA grants the petition for modification for the Caterpillar Inc., Model No. 120G, Serial No. 87V08979, diesel grader at the Juan South Underground Mine and the San Juan Deep Mine with conditions.

Docket No.: M–2000–002-M.
FR Notice: 65 FR 31612.
Petitioner: Original Sixteen to One Mine, Inc.
Regulation Affected: 30 CFR 57.11059(b).
Summary of Findings: Petitioner's proposal is to use its permissible combination self-contained breathing apparatus and pressure demand Type C supplied air respirator (MSHA and NIOSH approved TC–13F–146 issued on 4/13/88), in the interest of the health and safety of the hoist operator and the miners without modification, and continue to meet safety standards specific to the Sixteen to One Mine. This is considered an acceptable alternative method for the Original Sixteen to One Mine. MSHA grants the petition for modification for the Original Sixteen to One Mine with conditions.

Docket No.: M–2000–003-M.
FR Notice: 65 FR 40142.
Petitioner: FMC Corporation.
Regulation Affected: 30 CFR 57.22305.

Summary of Findings: Petitioner's proposal is to use a cordless drill or other equivalent drills to install surveying spads in the mine roof to minimize the potential of developing cumulative trauma disorders in the wrists, elbows, and shoulder of the surveyors. The petitioner propose to test for methane before using the drills and if one percent or more of methane is found, drilling will not begin and will be immediately stopped if a level of or greater than one percent methane is found. This is considered an acceptable alternative method for the Westvaco Mine. MSHA grants the petition for modification for the use Westvaco Mine with conditions.

Docket No.: M–2000–010–M.
FR Notice: 66 FR 9724.
Petitioner: ASARCO Incorporated.
Regulation Affected: 30 CFR 57.11055.

Summary of Findings: Petitioner's proposal is to use a vertical ladderway as an emergency escapeway, and as a secondary means of escape within the primary escapeway in the event of an extended power failure or repair to a damage hoist, to avoid hazards that are created by repeated unnecessary mine evacuations. This is considered an acceptable alternative method for the Coy Mine. MSHA grants the petition for modification for the Coy Mine during unplanned hoist outages to allow the Coy shaft ladderway to be designated as an escapeway 337 feet only when the Coy shaft hoist is incapacitated for unplanned reasons with conditions.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consol of Pennsylvania Coal Company

[Docket No. M–2002–039–C]

Consol of Pennsylvania Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable trailing cables and cords) to its Enlow Fork Mine (I.D. No. 46–07416) located in Greene County, Pennsylvania. The petitioner requests a modification of the existing standard to increase the maximum length of trailing cables supplying power to continuous mining machines be 950 feet. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Cook & Sons Mining, Inc.

[Docket No. M–2002–040-C]

Cook & Sons Mining, Inc., 147 Big Blue Boulevard, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Spring Branch #2 Mine, (I.D. No. 15–18287), UZ Deep Mine, (I.D. No. 15–18469), and Nu Enterprise Mine (I.D. No. 15–17481) all located in Letcher County, Kentucky. The petitioner proposes to use a permanently installed spring-loaded locking device to secure battery plugs on mobile battery-powered machines instead of a padlock to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Independence Coal Company, Inc.

[Docket No. M–2002–041–C]

Independence Coal Company, Inc., HC 78 Box 1800, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its White Oak Mine (I.D. No. 46–08933), WVOMSHT Permit U–5021–91, located in Boone County, West Virginia. The petitioner proposes to transfer 2,400 volt high-voltage equipment from one mine to another mine within the company. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. General Chemical (Soda Ash) Partners (GCSAP)

[Docket No. M–2002–003–M)

General Chemical (Soda Ash) Partners (GCSAP) has filed a petition to modify the application of 30 CFR 57.22305 (Approved equipment (III mines)) to its General Chemical Mine (I.D. No. 48–00155) located in Sweetwater County, Wyoming. The petitioner requests a modification of the existing standard to permit the use of the following non-permissible equipment in or beyond the last open crosscut: (i) A Leica Total Station Model No. TCR307 (6 volt battery), and (ii) a Milwaukee 14.4 Volt ½″ Hammer Drill Model No. 0514–20, or equivalent. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''*comments@msha.gov,*'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 10, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 6th day of May 2002.

Marvin W. Nichols, Jr.,
Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–11726 Filed 5–9–02; 8:45 am]
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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D–10786]

Proposed Amendment to Prohibited Transaction Exemption 92–6 (PTE 92–6) Involving the Transfer of Individual Life Insurance Contracts and Annuities From Employee Benefit Plans to Plan Participants, Certain Beneficiaries of Plan Participants, Personal Trusts, Employers and Other Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed amendment to PTE 92–6.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 92–6. PTE 92–6 is a class exemption that enables an employee benefit plan to sell individual life insurance contracts and annuities to: (1) A plan participant insured under such policies; (2) a relative of such insured participant who

is the beneficiary under the contract; (3) an employer any of whose employees are covered by the plan; or (4) another employee benefit plan, for the cash surrender value of the contract, provided certain conditions are met. The proposed amendment, if adopted, would affect, among others, certain participants, beneficiaries and fiduciaries of plans engaged in the described transactions.

DATES: If adopted, the proposed amendment would be effective February 12, 1992. Written comments and requests for a public hearing should be received by the Department on or before June 24, 2002.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (attention: PTE 92–6 Amendment). Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: ''*moffittb@pwba.dol.gov*'' or by FAX to (202)219–0204 by the end of the scheduled comment period. The application pertaining to the exemptive relief proposed herein (Application No. D–10786) and the comments received will be available for public inspection in the public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202)693–8540. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 92–6 (57 FR 5189, February 12, 1992), which amended Prohibited Transaction Exemption 77–8 (PTE 77–8) (42 FR 31574, June 21, 1977). PTE 92–6 provides an exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code.

The amendment to PTE 92–6 proposed herein was requested in an exemption application filed by the Chicago, Illinois law firm of Sonnenschein, Nath & Rosenthal on behalf of the General American Life Group (the Applicant). The Department is proposing the amendment pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

A. General Background

The prohibited transaction provisions of the Act generally prohibit various transactions between plans covered by Title I of ERISA and certain related parties with respect to such plans. Specifically, section 406(a)(1)(A) and (D) of the Act states that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) sale or exchange, or leasing, of any property between the plan and a party in interest; or

(D) transfer to, or use by or for the benefit of, a party in interest of any assets of the plan.

Accordingly, unless a statutory or administrative exemption is applicable, the sale of a life insurance contract, or annuity contract, by a plan to a party in interest is prohibited.

B. Description of Existing Relief

Section I of PTE 92–6 permits the sale of an individual life insurance or annuity contract by an employee benefit plan to: (1) A plan participant; (2) a relative of such insured participant who is the beneficiary under the contract; (3) an employer any of whose employees are covered by the plan; or (4) another employee benefit plan, if: (a) Such participant is the insured under the contract; (b) such relative is a ''relative'' as defined in section 3(15) of the Act (or a ''member of the family'' as defined in section 4975(e)(6) of the Code), or is a brother or sister of the insured (or a spouse of such brother or sister), and the beneficiary under the contract; (c) the contract would, but for the sale, be surrendered by the plan; (d) with respect to sales of the policy to the employer, a relative of the insured or another plan, the participant insured under the policy is first informed of the proposed sale and is given the opportunity to purchase such contract from the plan, and delivers a written document to the plan stating that he or she elects not to purchase the policy and consents to the sale by the plan of such policy to such employer, relative or other plan; (e) the amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been had it retained the contract, surrendered it, and made any distribution owing to the participant on his vested interest under the plan; and (f) with regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders or highly compensated employees.

Section II of PTE 92–6 amended PTE 77–8 to provide that the relief for transactions described in part I would be available, effective October 22, 1986, for plan participants who are owner-employees (as defined in section 401(c)(3) of the Code) or shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of enactment of the Subchapter S Revision Act of 1982), if the conditions set forth in part I are met.

C. Discussion of the Proposed Amendment

The Department, at the request of the Applicant, proposes to amend PTE 92–6 in order to expand the coverage of the exemption to include the sale by an employee benefit plan (the Plan) of an individual life insurance or annuity contract to a personal or private trust (the Trust) established by or for the benefit of an individual who is a participant in the Plan and the insured under the policy, or by or for the benefit of one or more relatives (as defined in section I(2) of PTE 92–6) of the participant. [2]

The Applicant notes that many Plans provide pre-retirement death benefit protection that is funded in whole or in part by the purchase of individual whole life and universal life insurance policies on the lives of the Plan's

[1] Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996]) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

[2] Section 402(a)(1)(A) of the Act prohibits a direct or indirect sale or exchange of any property between a Plan and a party in interest. Section 406(a)(1)(D) of the Act prohibits a transfer to, or use by or for the benefit of, a party in interest, of any assets of the Plan. In most cases, the participant will be a party in interest with respect to the Plan under section 3(14)(H) of the Act, as an employee of an employer any of whose employees are covered by the Plan. In some cases, the participant or relative will also be a party in interest under section 3(14)(A) or (E) as a fiduciary of the Plan, or as an owner of 50% or more of the employer maintaining the Plan. The Trust would be a party in interest under section 3(14)(G) of the Act if 50% or more of the beneficial interest of such Trust is owned or held by persons described in section 3(14)(A) or (E) of the Act.

participants. This is particularly true for Plans of small employers offering a pre-retirement death benefit, which do not have a sufficient number of participants to incur the actuarial risk of premature death of one or more participants in the absence of insurance. In addition, the cash value element of life insurance creates a funding vehicle for post-retirement pension benefits. The Internal Revenue Service has historically permitted Plans to invest in whole life insurance and universal life insurance by establishing specific standards for the provision of incidental death benefits funded by whole and universal life insurance.[3]

In conformity with these tax standards for insurance in Plans, pre-retirement death benefit protection under a Plan typically ceases upon the retirement of a covered participant. At that time, the Plan will need to obtain the policy's cash value to support post-retirement pension benefits, either by converting the policy's cash value to an annuity payment from the issuer of the policy, or realizing such cash value through a surrender of the policy to the issuer, or by a sale of the policy for an amount at least equal to the cash surrender value. Insured death benefit protection supported by policies may also cease before retirement when a participant terminates employment with a vested or partially vested benefit, when a Plan converts its funding method from individual policies to a group contract or to a different funding medium, when a Plan is amended to cease death benefit coverage for participants or for the class of employees to which a particular participant belongs, or when a Plan terminates.

In these circumstances, where a Plan will not continue the Policy in effect, Plans have historically permitted the insured participant, or other persons with consent of the participant, to purchase the policy. Sale of the policy by a Plan to, or for the benefit of, a participant allows the participant (or other owner) to keep the policy death benefit in effect while simultaneously allowing the Plan to realize the policy cash value. Maintaining the death benefit in effect is particularly advantageous where a participant, at the time the policy would otherwise be surrendered, is medically impaired so that he or she is uninsurable or insurable only at substantially higher premium rates (to reflect the higher risk of death) or where the policy contains valuable options or features that cannot be replicated for the same premium cost in the current market. All of the above circumstances, and the advantage to the participants of allowing the Plan to sell the policy to his or her designee in lieu of surrender, were recognized by the Department in granting PTE 77–8 and PTE 92–6.

In many circumstances, the participant will have created a Trust as part of his or her estate plan to hold a policy or policies on his or her life. The Trust beneficiaries are typically the participant's spouse or children or both, or other relatives. The Trust will typically purchase insurance contracts on the life of the participant, including the policy from the Plan, if available, with funds contributed by the participant or by one or more of his relatives. The Trust will almost always be irrevocable (although a right to amend and revoke may be given to a person other than the insured who created the Trust) and will commonly provide for the participant's spouse or another relative, or an independent person, to be the trustee of the Trust. The governing instruments of Trusts holding life insurance policies vary markedly in format (depending on the applicable state law, the types of contracts held, the insured's desired disposition of the proceeds and other Trust assets, the likely tax impact, and the drafter's style).

The principal reason a participant will want someone other than himself or herself to own a policy purchased from a Plan is to conform to the federal estate tax standards for excluding the proceeds of the policy from the participant's gross estate. The aim is for the participant to divest himself or herself of all ''incidents of ownership,'' or never to have had in the first instance any ''incidents of ownership,'' in the policy.[4] In general, this estate tax result can be achieved by having a policy (including all its ''incidents of ownership'') held by a relative of the participant (as allowed under PTE 92–6), as well as by a Trust. Accordingly, use of a Trust is not necessary for a participant to achieve this estate tax exclusion. However, a participant may prefer that a policy available from a Plan be purchased by a Trust rather than by an individual for a variety of non-tax reasons related to his or her family situation. Having the policy held by a spouse or other relative may expose the policy to undesirable consequences related to probate if, for instance, the owner should become incapacitated or pre-decease the participant. Those participants who are unsure of their own or their relatives' continued capacity to act as owners and stewards of the policy and its proceeds may indeed prefer to have the policy held within a Trust under the control of an independent trustee. In addition, ownership by a spouse or family member subjects the participant's desired ultimate disposition of the policy proceeds to risks associated with changes in family relationships or discord among family members. Also, a policy owned by the participant or relative may be exposed to claims of the owner's future creditors, which result can often be avoided by having the policy held in a properly structured Trust. Finally, a Trust can embody a carefully tailored, intricate dispositive scheme that precisely carries out the participant's intentions. Simply allowing the Plan to sell the policy to a relative or other individual owner will not always reflect what a participant really wants to do.

Based upon the arguments presented by the Applicant and the protections already embodied in PTE 92–6, the Department has determined to amend PTE 92–6 to expand the scope of relief for sales of life insurance policies by Plans. Accordingly, effective February 12, 1992,[5] the proposed amendment to PTE 92–6 would expand the coverage of the exemption to include the sale by a Plan of an individual life insurance or annuity contract to a Trust established by or for the benefit of an individual who is a participant in the Plan and the insured under the policy, or by or for the benefit of one or more relatives (as defined in Section I(2) of PTE 92–6) of the participant.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate

[3] See, for example, Treas. Reg. Section 1.401–1(b)(1)(i); and Rev. Rul. 66–143, 1966–1 C.B. 79.

[4] See, generally, section 2042 of the Code.

[5] i.e., the date of publication in the **Federal Register** of PTE 92–6.

for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption, if granted, would not extend to transactions prohibited under section 406(b)(3) of the Act or section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of ERISA and 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

The Department invites all interested persons to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments received will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the above address.

Paperwork Reduction Act

Prohibited Transaction Exemption 92–6 includes a disclosure provision that requires an insured participant to be informed prior to the sale of an applicable life insurance policy. Although this disclosure requirement constitutes a collection of information as defined in the Paperwork Reduction Act of 1995, that collection of information as currently approved under OMB control number 1210–0063 is not substantially or materially altered by the terms of this proposed amendment. Accordingly, no information collection request has been submitted to the Office of Management and Budget in connection with this Notice of Proposed Amendment to PTE 92–6.

Proposed Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department proposes to amend PTE 92–6 as set forth below:

I. Effective January 1, 1975, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of an individual life insurance or annuity contract by an employee benefit plan to: (1) A participant under such plan; (2) a relative of a participant under such plan; (3) an employer any of whose employees are covered by the plan; (4) another employee benefit plan; or (5) effective February 12, 1992, a trust established by or for the benefit of one or more of the persons described in (1) or (2) above;, if:

(a) Such participant is the insured under the contract;

(b) Such relative is a ''relative'' as defined in section 3(15) of the Act (or a ''member of the family'' as defined in section 4975(e)(6) of the Code), or is a brother or sister of the insured (or a spouse of such brother or sister), and such relative or trust is the beneficiary under the contract;

(c) The contract would, but for the sale, be surrendered by the plan;

(d) With respect to sales of the policy to the employer, a relative of the insured, a trust, or another plan, the participant insured under the policy is first informed of the proposed sale and is given the opportunity to purchase such contract from the plan, and delivers a written document to the plan stating that he or she elects not to purchase the policy and consents to the sale by the plan of such policy to such employer, relative, trust or other plan;

(e) The amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been had it retained the contract, surrendered it, and made any distribution owing to the participant on his vested interest under the plan; and

(f) With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders or highly compensated employees.

II. Effective October 22, 1986, the exemption provided for transactions described in part I is available for plan participants who are owner-employees (as defined in section 401(c)(3) of the Code) or shareholder-employees as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of enactment of the Subchapter S Revision Act of 1982) if the conditions set forth in part I are met.

Signed at Washington, DC, this 6th day of May, 2002.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–11661 Filed 5–9–02; 8:45 am]

BILLING CODE 4520–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D–10845]

Proposed Amendment to Prohibited Transaction Exemption 86–128 (PTE 86–128) for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of Proposed Amendment to PTE 86–128.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 86–128. PTE 86–128 is a class exemption that permits certain persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of those plans, provided that specified conditions are met. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts when certain conditions are met. Currently, PTE 86–128 generally is not available to any person (or any affiliate thereof) who is a trustee [other than a nondiscretionary trustee], plan administrator or an employer, any of whose employees are covered by the plan. The proposed amendment, if adopted, would allow a fiduciary that is a plan trustee to engage in a transaction covered by PTE 86–128. The proposed amendment would affect participants and beneficiaries of employee benefit plans, fiduciaries with respect to such plans, and other persons engaging in the described transactions.

DATES: If adopted, the proposed amendment will be effective as of the date the granted amendment is

published in the **Federal Register**. Written comments and requests for a public hearing should be received by the Department on or before June 24, 2002.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (attention: PTE 86–128 Amendment).

FOR FURTHER INFORMATION CONTACT: Christopher Motta, Office of Exemptions Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693–8544. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 86–128 (51 FR 41686, Nov. 18, 1986). PTE 86–128 provides an exemption from the restrictions of section 406(b) [1] of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code.

The amendment to PTE 86–128 proposed herein was requested in an application, dated October 29, 1999, on behalf of the Securities Industry Association (the SIA), a trade association for securities broker-dealers. The Department is proposing the amendment to PTE 86–128 pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[2]

Paperwork Reduction Act Analysis

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed revision of a currently approved collection of information: Prohibited Transaction Class Exemption 86–128 for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers. A copy of the proposed information collection request (ICR) can be obtained by contacting the Department of Labor Clearance Officer, ATTN: Marlene Howze, at (202) 693–4158.

DATES: Written comments must be submitted on or before July 9, 2002. Comments concerning the ICR should be directed to the Office of Management and Budget, ATTN: Desk Officer for Pension and Welfare Benefits Administration, 725 17th St., NW., Washington, DC.

Desired Focus of Comments

The Department of Labor and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Current Action

Prohibited Transaction Class Exemption 86–128 permits certain persons who serve as fiduciaries for employee benefit plans to effect or execute securities transaction on behalf of those plans, provided that specified conditions are met. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions under certain conditions. The conditions of the existing class exemption include specific information disclosure provisions currently approved under OMB control number 1210–0059.

This proposed amendment would allow a fiduciary that is a plan trustee to engage in a transaction covered by PTE 86–128. The existing PTE 86–128 is generally not available to any person (or any affiliate thereof) who is a trustee, plan administrator, or an employer, any of whose employees are covered by the plan. The proposed amendment would add such trustees, subject to conditions involving (1) the size of the plan, and (2) at least annual reporting to the authorizing fiduciary of each plan of annual brokerage commissions expressed in dollars paid to (a) brokerage firms affiliated with the trustee, and (b) brokerage firms unaffiliated with the trustee, and (3) at least annual reporting of average brokerage commissions expressed as cents per share paid to (a) brokerage firms affiliated with the trustee, and (b) brokerage firms unaffiliated with the trustee.

This amendment, if finalized, would result is a larger number of respondents and disclosure requirements that are specific to those respondents. The existing burdens and burden estimated to be associated with the proposed amendment are shown below.

Agency: Department of Labor, Pension and Welfare Benefits Administration

Title: PTE 86–128 for Certain Transactions Involving Employee Benefit Plans and Securities Broker-Dealers

Type of Review: Revision of a currently approved collection OMB Number: 1210–0059

Affected Public: Business or other for-profit; Not-for-profit institutions

Total Respondents: 22,974 existing; 700 proposal; 23,674 total

Total Responses: 542,813 existing; 700 proposal; 543,513 total

Frequency of Response: Quarterly; Annually

Total Annual Burden: 98,158 hours existing; 875 proposal; 99,033 total

Total Annual Cost (Operating & Maintenance): $188,200 (no addition for proposal)

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

A. General Background

The prohibited transaction provisions of the Act prohibit certain transactions between a plan and a party in interest

[1] References to section 406 of ERISA as they appear throughout this proposed amendment should be read to refer as well to the corresponding provisions of section 4975 of the Internal Revenue Code of 1986 (the Code).

[2] Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996] generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Internal Revenue Code of 1986 (the Code) to the Secretary of Labor.

(including a fiduciary) with respect to such plan. Specifically, unless a statutory or administrative exemption is applicable, section 406(a) of ERISA prohibits, among other things: the provision of services between a plan and parties in interest [including fiduciaries] with respect to such plan; and the transfer of assets from a plan to a party in interest with respect to such plan. In addition, unless exempted, section 406(b) of ERISA prohibits, among other things, a fiduciary's dealing with the assets of a plan in his or her own interest. Although section 408(b)(2) of ERISA provides a conditional statutory exemption permitting plans to make reasonable contractual arrangements with parties in interest for the provision of services necessary for plan operations, that exemption does not extend to acts of self-dealing described in section 406(b) of ERISA.

A fiduciary performing both investment management and brokerage services for the same plan is in a position where his or her decision to engage in a portfolio trade on behalf of the plan, as an exercise of fiduciary discretion, would result in the plan paying the fiduciary an additional fee for the provision of the brokerage services. In the Department's view, such a decision involves an act of self-dealing prohibited by ERISA section 406(b) with respect to which section 408(b)(2) of ERISA does not provide relief.

B. Description of Existing Relief

PTE 86–128 provides relief from the restrictions of section 406(b) for a plan fiduciary to use its authority to cause a plan to pay a fee to such fiduciary for effectuating or executing securities transactions as agent for the plan. Section I of PTE 86–128 contains definitions and special rules. Notably, for purposes of this class exemption, a ''person'' is defined to include ''the person and affiliates of the person'', and an ''affiliate'' of a ''person'' is defined, in part, to include: (1) Any person directly or indirectly controlling, controlled by, or under common control with, the person; (2) any officer, director, partner, employee, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or sister, of the person; and (3) any corporation or partnership of which the person is an officer, director or partner.

Section II describes the transactions covered under PTE 86–128, to include: A plan fiduciary using his or her authority to cause a plan to pay a fee for effecting or executing securities transactions to that person as agent for the plan, but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency; a plan fiduciary acting as the agent in an agency cross transaction for both the plan and one or more other parties to the transaction; and the receipt by a plan fiduciary of reasonable compensation for effecting or executing an agency cross transaction to which a plan is a party in interest from one or more other parties to the transaction.

Section III contains conditions designed to protect the interests of plan participants and beneficiaries. These conditions require prior authorization to engage in covered transactions and periodic disclosure of the fiduciary's activities to the authorizing plan fiduciary. Section III(a) provides that the person engaging in a covered transaction is not a trustee (other than a nondiscretionary trustee) or an administrator of the plan, or an employer any of whose employees are covered by the plan. The term ''person'' is defined to include ''affiliates'' of the person, thus discretionary trustees, plan administrators, sponsoring employers, and their affiliates are generally precluded from relying on the relief provided by the exemption.

Section IV contains exceptions to several of the conditions in section III. Specifically, section IV provides that the conditions of section III do not apply to covered transactions to the extent such transactions are engaged in on behalf of individual retirement accounts which meet the requirement set forth in 29 CFR 2510.3–2(d) or plans, other than training programs, that do not cover any employees within the meaning of 29 CFR 2510.3–3. In addition, section IV provides that the conditions of section III do not apply in the case of agency cross transactions to the extent that the person effecting or executing the transaction: Does not render investment advice to any plan for a fee with respect to the transaction; is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction; and does not have the authority to engage, retain or discharge any person who is, or is proposed to be, a fiduciary regarding any such plan assets. Section IV also provides that a plan trustee, plan administrator, or sponsoring employer may engage in a covered transaction if he or she returns or credits to the plan all profits earned by that person in connection with the securities transactions associated with the covered transaction. Finally, Section IV contains special rules for pooled investment funds.

C. Discussion of the Proposed Exemption

The SIA requests an amendment to PTE 86–128 which would enable a discretionary trustee of an ERISA covered plan, or an affiliate of such trustee, to use its fiduciary authority to cause the plan to pay a fee to such trustee for effectuating or executing securities transactions as agent for the plan. The applicant represents that the amendment is necessary since, as a result of the consolidation in the nation's financial services industry, plans are finding it increasingly difficult to select service providers that are unaffiliated with plan trustees. In addition, the applicant notes that banks, as trustees with investment discretion, are currently precluded under PTE 86–128 from using their affiliated broker-dealers to execute securities transactions.

According to the applicant, there has been an increase in the number of discretionary trustees that have affiliates providing brokerage services. The applicant states that, as a result, there are fewer brokers that are not affiliated in some way with a plan trustee. The applicant represents that further consolidation is likely under the Gramm-Leach-Bliley Act, signed into law on November 12, 1999 (Pub. L. 106–102, 113 Stat. 1338 (1999). [3]

The SIA represents that, as a result of this consolidation, the discretionary trustees of larger plans, or affiliated investment managers thereof, often have little choice but to pay the higher transaction costs associated with executing securities transactions only through unaffiliated broker-dealers. In addition, the SIA represents that the investment strategies of certain plans, such as small cap, emerging markets or international investing, are increasingly becoming stunted as the number of available brokers having the requisite specialized expertise decreases. The proposed amendment, the applicant represents, will therefore be beneficial to plans because plan fiduciaries will no longer be forced to: appoint a plan trustee that does not have affiliated investment managers; appoint investment managers that are not affiliated with the trustee; or effect or execute securities transactions only through unaffiliated broker-dealers.

The SIA states that the relief sought in this application was originally

[3] The new law will facilitate cross-ownership and control among bank holding companies and securities firms through the creation of ''financial hold companies'' that will be permitted to engage in broad range of financial and related activities, including underwriting and dealing activities.

requested in 1986, when the Department replaced PTE 79–1 with PTE 86–128. At that time, the Department granted relief only where the trustee was strictly custodial and had no discretionary powers noting that ''as a general matter, the position of a plan trustee may carry with it so great an influence over the general operation of the plan that an independent fiduciary may not be effective in examining critically and objectively multiple service arrangements'', (Preamble to PTE 86–128, 51 FR 41686, 41692 (November 18, 1986). However, the SIA represents that the comparative benefits gained by continuing to deny relief to discretionary trustees and their affiliates are at best speculative. They note that federal securities laws and banking laws, and the duties imposed upon fiduciaries by ERISA section 404(a), require that investment managers, regardless of whether they are affiliated with the trustee, seek ''best execution'' in effecting securities transactions on behalf of plans. The SIA also states that brokerage commissions have become very competitive and very transparent.

Moreover, the SIA represents that the compensation arrangements that investment managers have with plans encourage investment managers to seek ''best execution'' in effecting securities transactions through affiliated broker-dealers. In this regard, the SIA represents that an investment manager is typically compensated based upon the amount of assets under its management. The SIA represents further that the amount of ''assets under management'', in turn, is reduced by the brokerage commissions paid by such investment manager. Thus, according to the SIA, investment managers have an incentive to seek ''best execution'' in effecting securities transactions through affiliated broker-dealers since, to the extent a plan pays higher brokerage commissions than is required under the particular circumstances, the amount of compensation received by the plan's investment manager will be directly impacted by the amount of brokerage commissions paid by the plan.

The SIA is of the opinion that plans can be additionally protected from the risk of discretionary trustees ''steering'' brokerage to a broker-dealer affiliate by requiring such trustees to disclose annually to an independent fiduciary all brokerage commissions paid to affiliated and unaffiliated broker-dealers. They state that a plan sponsor, advised in writing of the potential conflicts and provided with significant comparative reporting, should be able to oversee the investment manager, regardless of whether the manager is affiliated with the trustee. The SIA notes that the underwriter exemptions [4] provide similar relief to, among others, fiduciaries, including trustees, as long as certain reporting requirements are met and to the extent affected plans meet a minimum size threshold. The SIA represents that a comparable minimum size threshold and certain reporting requirements should adequately protect plans and ensure that the requested relief is in the best interest of affected plans.

Finally, the SIA notes that plan sponsors, especially large ones, have become increasingly sophisticated such that many trustees with broker-dealer affiliates maintain collective investment funds that passively manage portfolios to minimize trading and transaction costs. The SIA represents that, in such instances, the use by discretionary trustees of their own affiliates to provide brokerage services poses very little of the risk previously described by the Department. The SIA represents that, for all of the reasons cited above, it is appropriate for the Department to reconsider its position.

On the basis of the SIA's representations, and after reevaluating the Department's previously expressed concerns, the Department has tentatively concluded that it would be appropriate to extend relief under PTE 86–128 to discretionary plan trustees, provided that certain additional conditions are met. In this regard, the Department believes that a minimum plan size requirement is necessary in order to ensure an appropriate level of plan investor sophistication to monitor the covered transactions. Thus, the Department proposes to limit relief to plans with more than $50 million in assets. While the SIA has agreed to this dollar limitation, it has also suggested that this dollar limitation be reviewed periodically and that the $50 million requirement permit aggregation of all plans of an employer.[5]

Accordingly, the Department is proposing to limit the relief provided to trustees to plans that have net assets valued at least $50 million. In the case of a pooled fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans having total net assets with a value of at least $50 million. For purposes of the net asset tests described above, where a group of plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust.

The Department also proposes that the trustee (other than a nondiscretionary trustee) furnish, at least annually, to the independent fiduciary of each authorizing plan, the following information:

(i) The total amount of brokerage commissions, expressed in dollars, paid by the plan (or fund in situations where a plan invests in a pooled fund) to brokerage firms affiliated with the trustee;

(ii) The total amount of brokerage commissions, expressed in dollars, paid by the plan (or fund in situations where a plan invests in a pooled fund) to brokerage firms unaffiliated with the trustee;

(iii) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms affiliated with the trustee; and

(iv) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms unaffiliated with the trustee.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of

[4] See e.g., PTE 2000–25 (65 FR 35129, June 1, 2000), an individual underwriter exemption which permits purchases of securities by the applicant's asset management affiliate, on behalf of employee benefit plans for which such asset managment affiliate is a fiduciary, from underwriting or selling syndicates where the applicants' broker-dealer affiliate participates as a manager or syndicate member.

[5] PTE 2000–25, Section I (o) provides, in part, that for purposes of meeting the net asset tests, where a group of plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement * * * may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust.

the employer maintaining the plan and their beneficiaries;

(2) This exemption does not extend to transactions prohibited under section 406(a) of the Act;

(3) Before an exemption may be granted under section 408(a) of ERISA and 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

The Department invites all interested persons to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments received will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the above address.

Proposed Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department proposes to amend PTE 86–128 as set forth below:

(1) Section III(a) is amended to read: ''The person engaging in the covered transaction is not an administrator of the plan, or an employer any of whose employees are covered by the plan.

(2) Adding to Section III new paragraph (h) to read: ''(h) A trustee [other than a nondiscretionary trustee] may only engage in a covered transaction with a plan that has total net assets with a value of at least $50 million and in the case of a pooled fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans having total net assets with a value of at least $50 million.

For purposes of the net asset tests described above, where a group of plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust.

(3) Adding to Section III new paragraph (i) to read:

''(i) The trustee (other than a nondiscretionary trustee) engaging in a covered transaction furnishes, at least annually, to the authorizing fiduciary of each plan the following:

(1) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms affiliated with the trustee;

(2) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms unaffiliated with the trustee;

(3) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms affiliated with the trustee; and

(4) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms unaffiliated with the trustee.''

For purposes of this paragraph (i), the words ''paid by the plan'' shall be construed to mean ''paid by the pooled fund'' when the trustee engages in covered transactions on behalf of a pooled fund in which the plan participates.

Signed at Washington, DC, this 6th day of May, 2002.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–11662 Filed 5–9–02; 8:45 am]

BILLING CODE 4520–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites 1 public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 24, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and

authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–02–9, 96 items, 96 temporary items). Electronic versions of temporary records relating to developmental engineering, acquisition, contracting, and financial management. Included are electronic copies of documents created using electronic mail and word processing as well as electronic records that supplement or replace paper records already approved for disposal. Records relate to such matters as industrial equipment, supply quality assurance, purchase requests, contract performance, contractor personnel, and the tracking and status of audits.

2. Department of the Air Force, Agency-wide (N1–AFU–02–10, 72 items, 72 temporary items). Electronic versions of temporary records relating to security and law enforcement, medical matters, chaplain activities, historical and museum programs, and command policy. Included are electronic copies of documents created using electronic mail and word processing as well as electronic records that supplement or replace paper records already approved for disposal. Records relate to such matters as information security activities, facilities security, veterinary services, nursing, dental x-rays, chaplain funds, historical research and reference, museum operations, inspector general administrative reports, inspection checklists, and congressional travel.

3. Department of the Air Force, Agency-wide (N1–AFU–02–11, 73 items, 73 temporary items). Electronic versions of temporary records relating to personnel matters. Included are electronic copies of documents created using electronic mail and word processing as well as electronic records that supplement or replace paper records already approved for disposal. Records relate to such matters as financial disclosure reporting, drug abuse treatment programs, the issuance of passes and other credentials, personnel strength reporting, family support programs, recruitment activities, re-enlistment and retention, and promotion actions.

4. Department of the Air Force, Agency-wide (N1–AFU–02–12, 78 items, 78 temporary items). Electronic versions of temporary records relating to personnel matters. Included are electronic copies of documents created using electronic mail and word processing as well as electronic records that supplement or replace paper records already approved for disposal. Records relate to such matters as overall civilian personnel management policies and procedures, staffing of civilian positions, personnel selection and placement, career development, performance appraisals, position classification, honors and awards, family services programs, and the training of uniformed personnel.

5. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–02–1, 3 items, 3 temporary items). Records documenting market surveys and statistics relating to fish and the fishery industry. Included are statistical data files, survey operations files, and electronic copies of records created using electronic mail and word processing.

6. Department of Defense, Defense Threat Reduction Agency (N1–374–02–2, 10 items, 5 temporary items). Administrative correspondence and memorandums, electronic calendars, and an electronic correspondence tracking system accumulated by the Office of the Director. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of speech transcripts, briefing materials, calendars, policy and precedent files, and mission-related chronological files.

7. Department of Energy, Spent Nuclear Fuels Program (N1–434–01–3, 8 items, 8 temporary items). Records relating to offsite storage facilities, the licensing of independent spent fuel storage installations, proposed shipments that never were sent, and the support of spent fuels programs. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of the Navy, Agency-wide (N1–NU–02–6, 6 items, 4 temporary items). Records relating to the Alcohol and Drug Management Information Tracking System, a database containing information about individuals treated for abuse of drugs or alcohol. Included are source documents, output summary reports, and other output records. Also included are electronic copies of documents created by using electronic mail and word processing. Proposed for permanent retention are the electronic master files and the technical documentation relating to the system.

9. Department of State, Bureau of Political-Military Affairs (N1–59–01–19, 12 items, 8 temporary items). Records of the Office of Contingency Planning and Peacekeeping relating to interagency exercises and the office's weekly activities. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of subject files, regional/country files, political-military plans, and complex contingency operation files.

10. Department of Transportation, Federal Aviation Administration (N1–237–01–2, 10 items, 10 temporary items). Records of the Office of Aviation Medicine relating to the development and implementation of drug and alcohol abuse prevention programs. Included are records relating to such matters as random drug testing, program certifications, the approval of plans, and investigations and inspections. Also included are electronic copies of documents created using electronic mail and word processing.

11. Executive Office of the President, Office of Management and Budget (N1–

51–02–1, 6 items, 2 temporary items). Electronic copies of documents created using word processing relating to legislation. Recordkeeping copies of public and private legislation files are proposed for permanent retention.

12. Federal Reserve System, Board of Governors (N1–82–02–1, 34 items, 33 temporary items). Records relating to Board oversight of Reserve Bank operations and services, including such matters as examinations and reviews of Reserve Banks, financial accounting, currency orders, Reserve Bank budgeting, equipment and facilities acquisition, and human resources activities. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are architectural and engineering plans for Federal Reserve Bank buildings.

Dated: May 6, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–11728 Filed 5–9–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 8563 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register.**

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send email to *splimpto@nsf.gov.*

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: National Science Foundation Science Honorary Awards.

OMB Control No.: 3145–0035.

Abstract: The National Science Foundation (NSF) administers several honorary awards, among them the President's National Medal of Science, the Alan T. Waterman Award, the NSB Vannevar Bush Award, and the NSB Public Service Award.

Use of the Information: The Foundation has the following honorary award programs:

• President's National Medal of Science. Statutory authority for the President's National Medal of Science is contained in 42 U.S.C. 1881 Pub. L. 86–209), which established the award and stated that ''(t)he President shall * * * award the Medal on the recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as * * * appropriate.''

Subsequently, Executive Order 10961 specified procedures for the Award by establishing a National Medal of Science Committee which would ''receive recommendations made by any other nationally representative scientific or engineering organization.'' On the basis of these recommendations, the Committee was directed to select its candidates and to forward its recommendations to the President.

In 1962, to comply with these directives, the Committee initiated a solicitation form letter to invite these nominations. In 1979, the Committee initiated a nomination form as an attachment to the solicitation letter. A slightly modified version of the nomination form was used in 1980. The Committee agreed that such a form standardized the nomination format, benefiting the nominator, making the Committee's review process more efficient and permitted better staff work in a shorter period of time. Form NSF–1122 will be used to further standardize the nomination procedures, thus continuing to allow for more effective committee review, and permitting better staff work in a shorter period of time.

The Committee has established the following guidelines for selection of candidates:

1. The total impact of an individual's work on the present state of physical, biological, mathematical, engineering, or social and behavioral sciences is to be the principal criterion.

2. Achievement of an unusually significant nature in relation to the potential effects of such achievement on the development of scientific thought.

3. Unusually distinguished service in the general advancement of science and engineering, when accompanied by substantial contributions to the content of science at some time.

4. Recognition by peers within the scientific community.

5. Contributions to innovation and industry.

6. Influence on education through publications, students.

7. Must be a U.S. citizen or permanent resident who has applied for citizenship.

Nominations remain active for a period of four years, including the year of nomination. After that time, candidates must be renominated with a new nomination package for them to be considered by the Committee.

Nomination forms should be typewritten, single-spaced using a font no smaller than 12 characters per inch. Renominations may be submitted via an updated nomination form.

• Alan T. Waterman Award. Congress established the Alan T. Waterman Award in August 1975 (42 U.S.C. 1881a (Pub. L. 94–86) and authorized NSP to ''establish the Alan T. Waterman Award for resrach or advanced study in any of

the sciences or engineering'' to mark the 25th anniversary of the National Science Foundation and to honor its first Director. The annual award recognizes an outstanding young researcher in any field of science or engineering supported by NSF. In addition to a medal, the awardee receives a grant of $500,000 over a three-year period for scientific research or advanced study in the mathematical, physical, medical, biological, engineering, social, or other sciences at the institution of the recipient's choice.

The Alan T. Waterman Award Committee was established by NSF to comply with the directive contained in Public Law 94–86. The Committee solicits nominations from members of the National Academy of Sciences, National Academy of Engineering, scientific and technical organizations, and any other source, public or private, as appropriate.

In 1976, the Committee initiated a form letter to solicit these nominations. In 1980, a nomination form was used which standardized the nomination procedures, allowed for more effective Committee review, and permitted better staff work in a short period of time. On the basis of its review, the Committee forwards its recommendations to the Director, NSF, and the National Science Board (NSB).

Candidates must be U.S. citizens or permanent residents and must be 35 years of age or younger or not more than seven years beyond receipt of the PhD degree by December 31 of the year in which they are nominated. Candidates should have demonstrated exceptional individual achievements in scientific or engineering research of sufficient quality to place them at the forefront of their peers. Criteria include originality, innovation, and significant impact on the field.

• Vannevar Bush Award. The NSB established the Vannevar Bush Award in 1980 to honor Dr. Bush's unique contributions to public service. The annual award recognizes an individual who, through public service activities in science and technology, has made an outstanding ''contribution toward the welfare of mankind and the Nation.''

The NSB ad hoc Vannevar Bush Award Committee annually solicits nominations from selected scientific engineering and educational societies. Candidates must be a senior stateperson who is an American citizen and meets two or more of the following criteria:

1. Distinguished him/herself through public service activities in science and technology.

2. Pioneered the exploration, charting and settlement of new frontiers in science, technology, education and public service.

3. Leadership and creativity has inspired others to distinguished careers in science and technology.

4. Contributed to the welfare of the Nation and mankind through activities in science and technology.

5. Leadership and creativity has helped mold the history of advancements in the Nation's science, technology, and education.

Nomination submissions are in letter format, accompanied by a curriculum vitae (without publication), a brief citation summarizing the nominee's scientific or technological contributions to our national welfare in promotion of the progress of science, and two reference letters. Nominations remain active for three years, including the year of nomination.

• NSB Public Service Award. The NSB Public Service Award Committee was established in November 1996. This annual award recognizes people and organizations who have increased the public understanding of science or engineering. The award is given to an individual and to a group (company, corporation, or organization), but not to members of the U.S. Government.

Eligibility includes any individual or group (company, corporation or organization) that has increased the public understanding of science or engineering. Members of the U.S. Government are not eligible for consideration.

Candidates for the individual and group (company, corporation or organization) award must have made contributions to public service in areas other than research, and should meet one or more of the following criteria:

1. Increased the public's understanding of the processes of science and engineering through scientific discovery, innovation and its communication to the public.

2. Encouraged others to help raise the public understanding of science and technology.

3. Promoted the engagement of scientists and engineers in public outreach and scientific literacy.

4. Contributed to the development of broad science and engineering policy and its support.

5. Influenced and encouraged the next generation of scientist and engineers.

6. Achieved broad recognition outside the nominee's area of specialization.

7. Fostered awareness of science and technology among broad segments of the population.

Nomination procedures:

1. Prepare a summary of the nominee's activities as they relate to the selection criteria. Include the nominator's name, address and telephone number, and the name, address, and telephone number of the nominee, as well as the nominee's vita, if appropriate (no more than three pages).

2. The selection committee recommends the most outstanding candidate(s) for each category to the NSB, which approves the awardees.

3. Nominations remain active for a period of three years, including the year of nomination. After that time, candidates must be renominated with a new nomination package for them to be considered by the selection committee.

4. Nominations should be mailed or faxed to the NSB Public Service Award Advisory Committee. Electronic mail does not protect confidentiality and should not be used for this purpose.

Estimate of Burden: These are annual award programs with application deadlines varying according to the program. Public burden also may vary according to program; however, it is estimated that each submission is averaged to be 15 hours per respondent for each program. If the nominator is thoroughly familiar with the scientific background of the nominee, time spent to complete the nomination may be considerably reduced.

Respondents: Individuals, businesses or other for-profit organizations, universities, non-profit institutions, and Federal and State governments.

Estimated Number of Responses per Award: 137 responses, broken down as follows: For the President's National Medal of Science, 55; for the Alan T. Waterman Award, 50; for the Vannevar Bush Award, 12; for the Public Service Award, 20.

Estimated Total Annual Burden on Respondents: 1,242 hours, broken down by 450 hours for the President's National Medal of Science (10 hours per 45 respondents); 600 hours for the Alan T. Waterman Award (10 hours per 60 respondents); 72 hours for the Vannevar Bush Award (6 hours per 12 respondents); and 120 hours for the Public Service Award (6 hours per 20 respondents.

Frequency of Responses: Annually.

Dated: May 6, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–11732 Filed 5–9–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering (1115).

Date/Time: May 31, 2002: 8:30 a.m. to 4 p.m.

Place: National Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA.

Type of Meeting: Open.

Contact Person: Gwen Barber-Blount, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, Va 22230. Telephone: (703) 292–8900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: report from the Assistant Director. Discussion of Information Technology Research, CISE Programs and CISE Budget.

Dated: May 7, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–11733 Filed 5–9–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Energy Corporation; McGuire Nuclear Station, Units 1 and 2; Notice of Availability of the Draft Supplement 8 to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of McGuire Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses NPF–9 and NPF–17 for an additional 20 years of operation at McGuire Nuclear Station, Units 1 and 2 (McGuire). McGuire is located in Mecklenburg County, North Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft supplement to the GEIS is available electronically for public inspection in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.* In addition, the J. Murrey Atkins Library at the University of North Carolina—Charlotte, has agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by August 2, 2002. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by the Internet at *McGuireEIS@nrc.gov.* All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's Public Document Room in Rockville, Maryland and from the Publicly Available Records (PARS) component of NRC's document system (ADAMS).

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held in the auditorium at the Central Piedmont Community College, at 11920 Verhoeff Road, Huntersville, North Carolina on June 12, 2002. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include (1) a presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. James H. Wilson by telephone at 1–800–368–5642, extension 1108, or by Internet to the NRC at *McGuireEIS@nrc.gov* no later than June 7, 2002. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Wilson's attention no later than June 7, 2002, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Wilson, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Wilson may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 7th day of May, 2002.

For the Nuclear Regulatory Commission.

John R. Tappert,

Acting Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11748 Filed 5–9–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District, Fort Calhoun Station, Unit 1; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Omaha Public Power District (OPPD) has submitted an application for renewal of Facility Operating License No. DPR–40 for an additional 20 years of operation at the Fort Calhoun Station (FCS), Unit 1. FCS is located in Washington County, Nebraska, approximately 19 miles north-northwest of Omaha, Nebraska. The application for renewal was submitted by letter dated January 9, 2002, pursuant to 10 CFR part 54, and updated on January 18, 2002. A notice of receipt of application, including the environmental report (ER), was published in the **Federal Register** on February 12, 2002 (67 FR 6551). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on April 16, 2002 (67 FR 18639), and modified on April 22, 2002 (67 FR 19599). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29.

In accordance with 10 CFR 54.23 and 10 CFR 51.53(c), OPPD submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is available for public inspection at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of NRC's document system (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Public Electronic Reading Room (PERR) link. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/ft-calhoun.html*. In addition, the W. Dale Clark Library, located at 215 South 15th Street, Omaha, NE 68102, and the Blair Public Library, located at 210 South 17th Street, Blair, NE 68008–2055, have agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants,'' (NUREG–1437) in support of the review of the application for renewal of the FCS operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. Section 51.95 of 10 CFR requires that the NRC prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in this scoping process by members of the public and local, State, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other environmental impact statements (EISs) that are being or will be prepared that are related to but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Omaha Public Power District.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the FCS license renewal supplement to the GEIS. The scoping meetings will be held at the Days Hotel, 10909 M Street, Omaha, Nebraska, on Tuesday, June 18, 2002. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include (1) an overview by the NRC staff of the National Environmental Policy Act (NEPA) environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; (2) an overview by OPPD of the proposed action; and (3) the opportunity for interested Government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session at the Days Hotel. No comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope

of the NEPA review by contacting Mr. Thomas J. Kenyon by telephone at 1 (800) 368–5642, extension 1120, or by Internet to the NRC at *Ft_Calhoun_EIS@nrc.gov* no later than June 5, 2002. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Kenyon's attention no later than June 5, 2002, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the FCS license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. To be considered in the scoping process, written comments should be postmarked by July 10, 2002. Electronic comments may be sent by the Internet to the NRC at *Ft_Calhoun_EIS@nrc.gov.* Electronic submissions should be sent no later than July 10, 2002, to be considered in the scoping process. Comments will be available electronically and accessible through the NRC's Public Electronic Reading Room (PERR) link *HTTP://www.nrc.gov/reading-rm/adams.html.*

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice of acceptance for docketing. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the PERR link. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Kenyon at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 6th day of May 2002.

For the Nuclear Regulatory Commission.

John R. Tappert,

Acting Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11747 Filed 5–9–02; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Statement Regarding Contributions and Support.

(2) *Form(s) submitted:* G–134.

(3) *OMB Number:* 3220–0099.

(4) *Expiration date of current OMB clearance:* 6/30/2002.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 100.

(8) *Total annual responses:* 100.

(9) *Total and reporting hours:* 259.

(10) *Collection description:* Dependency on the employee for one-half support at the time of the employee's death can be a condition affecting eligibility for a survivor annuity provided for under Section 2 of the Railroad Retirement Act. One-half support is also a condition which may negate the public pension offset in Tier 1 for a spouse or widow(er).

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rust Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington DC 20450.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–11763 Filed 5–9–02; 8:45 am]

BILLING CODE 7905–1–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* RUIA Claims Notification System.

(2) *Form(s) submitted:* ID–4k.

(3) *OMB Number:* 3220–0171.

(4) *Expiration date of current OMB clearance:* 6/30/2002.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other for-profit.

(7) *Estimated annual number of respondents:* 669.

(8) *Total annual responses:* 18,600.

(9) *Total annual reporting hours:* 460.

(10) *Collection description:* Section 5(b) of the RUIA requires that effective January 1, 1990, ''when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base year employer(s) and afford such employer(s) an opportunity to submit information relevant to the claim''.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush

Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–11764 Filed 5–9–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Availability for Work.

(2) *Form(s) submitted:* UI–38, UI–38s, ID–8k.

(3) *OMB Number:* 3220–0164.

(4) *Expiration date of current OMB clearance:* 7/31/2002.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, non-profit institutions.

(7) *Estimated annual number of respondents:* 7,600.

(8) *Total annual responses:* 7,600.

(9) *Total annual reporting hours:* 1,085.

(10) *Collection description:* Under Section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day in which the claimant is not available for work. The collection obtains information needed by the to determine whether a claimant is willing and ready to work.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20502.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–11765 Filed 5–9–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27526]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

May 3, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 28, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 28, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Reliant Energy, Inc., et al. (70–9895)

Reliant Energy, Incorporated (''REI''), a Texas public-utility holding company exempt by order under section 3(a)(2) of the Act,[1] and its wholly owned Texas subsidiary company formed for purposes of the transactions described in this filing, CenterPoint Energy, Inc. (''New REI'') (together, ''Applicants''), 1111 Louisiana, Houston, TX 77002, have filed an amended and restated application-declaration under sections 3(a)(1), 6, 7, 9(a), 10, 12(b), 12(c), 12(f) and 13 and rules 43, 44, 45, 46, 52, 54, 90 and 91 of the Act in connection with a corporate restructuring (''Restructuring'') of REI. On November 2, 2001, the Commission issued a notice of the proposed Restructuring.[2] The nature of the requested authority has now changed because New REI proposes to register as a holding company under section 5 of the Act. New REI will register following the Electric Restructuring (described and defined below).

I. Introduction

A. Background

REI is a Texas electric utility company and a combination electric and gas public-utility holding company. Through its unincorporated HL&P division (the ''HL&P Division''), REI generates, purchases, transmits and distributes electricity to approximately 1.7 million customers in Texas. REI primarily serves a 5,000-square mile area on the Texas Gulf Coast, including the Houston metropolitan area. All of REI's electric generation and operating properties are located in Texas. For the year ended December 31, 2001, HL&P reported operating income of $1.091 billion on total operating revenues of $5.5 billion.

As an electric utility, the HL&P Division is subject to regulation by the Public Utility Commission of Texas (the ''Texas Commission'') and to the provisions of the Texas Act, as that term is defined below. REI is a member of the Electric Reliability Council of Texas, Inc. (''ERCOT''), which provides the function of ''Independent System Operator'' for its member utilities.[3]

REI conducts natural gas distribution operations through three unincorporated divisions of its wholly owned gas utility subsidiary, Reliant Energy Resources Inc. (''GasCo''): (1) The Entex Division, which serves approximately 1.5 million customers, located in Texas (including the Houston metropolitan area), Louisiana and Mississippi; (2) the Arkla Division, which serves approximately 716,600 customers located in Texas, Louisiana, Arkansas, and Oklahoma; and (3) the Minnegasco Division, which serves approximately 711,000 customers in Minnesota. The largest communities served by Arkla are the metropolitan areas of Little Rock, Arkansas and Shreveport, Louisiana. Minnegasco serves the Minneapolis metropolitan area.

The Entex Division is subject to regulation by the Texas Railroad Commission, the Louisiana Public Service Commission (the ''Louisiana

[1] *Houston Industries*, Holding Co. Act Release No. 26744 (July 24, 1997).

[2] *See* Holding Co. Act Release No. 27462.

[3] ERCOT represents a bulk electric system located entirely within Texas. Because of the intrastate status of their operations, the primary regulatory authority for the HL&P Division and ERCOT is the Texas Commission, although the Federal Energy Regulatory Commission exercises limited authority.

Commission'') and the Mississippi Public Service Commission. The Arkla Division is subject to regulation by the Texas Railroad Commission, the Louisiana Commission, the Arkansas Public Service Commission and the Corporation Commission of the State of Oklahoma. The Minnegasco Division is subject to regulation by the Minnesota Public Utilities Commission.

For the year ended December 31, 2001, the Entex, Arkla, and Minnegasco Divisions reported combined net operating income of $158 million. At December 31, 2001, reported net property, plant and equipment were $1.6 billion.

REI conducts its nonutility operations, including merchant power generation and energy trading and marketing, largely through its partially owned nonutility subsidiary company, Reliant Resources, Inc. (''Reliant Resources''), and its subsidiary companies. These nonutility subsidiaries include wholesale power, trading and communications operations and, since the beginning of retail electric competition in Texas in January 2002, the sale of electricity to retail customers formerly served by REI's integrated electric-utility operations. As discussed below, New REI plans to spin off Reliant Resources soon after completion of the restructuring of the electric system (''Electric Restructuring'').

REI's existing structure resulted from the acquisition by Houston Industries Incorporated (''Houston Industries'') of NorAm Energy Corp. (''NorAm'') in August 1997.[4] Prior to the acquisition, Houston Industries' principal utility operations were conducted through its electric utility subsidiary, Houston Light & Power Company (''HL&P''). NorAm engaged in gas distribution operations. In the merger, Houston Industries merged into HL&P (which then adopted the name Houston Industries Incorporated). HL&P became a division of the holding company, Houston Industries, and NorAm become a first tier, wholly owned subsidiary of the holding company.

In 1999, the name of the holding company was changed from Houston Industries to Reliant Energy, Incorporated, referred to in the application as REI, and the electric utility company became Reliant Energy HL&P, a division of REI referred to in the application as the HL&P Division. NorAm became Reliant Energy Resources Corp., referred to in the application as GasCo.

[4] See Houston Industries, supra note 1.

In June 1999, S.B. 7, known as the Texas Electric Choice Plan (the ''Texas Act''), substantially amended the regulatory structure governing electric utilities in Texas to provide for full retail competition. Under the Texas Act, traditional vertically integrated electric utility companies are required to separate their generation, transmission and distribution, and retail activities.

On March 15, 2001, the Texas Commission approved a business separation plan (the ''Business Separation Plan'') under which REI's existing electric utility operations would be separated into three businesses: a power generation company, a transmission and distribution utility (''T&D Utility'') and a retail electric provider (''REP'').

Under the Business Separation Plan, Reliant Resources became the successor to REI as the REP to customers in the Houston metropolitan area when the Texas market opened to competition in January 2002. Reliant Resources became the REP for all of REI's customers in the Houston metropolitan area that did not take action to select another retail electric provider.[5]

As a preliminary step toward the Restructuring, REI formed Reliant Resources as a subsidiary and transferred to it, or its subsidiaries, substantially all of REI's nonutility operations, including merchant power generation, energy trading and marketing, and communications operations. On May 4, 2001, Reliant Resources completed an initial public offering (''IPO'') of approximately 20% of its common stock. REI expects that the IPO will be followed by a tax-free distribution of the remaining Reliant Resources common stock to the shareholders of REI or its successor (''Distribution''). As a result of the Distribution, Reliant Resources will cease to be an affiliate of New REI for purposes of the Act and will become a separate publicly traded corporation.

B. The Restructuring

The Restructuring itself will proceed in the following stages (more fully described below): the Electric Restructuring, the Distribution, the Texas Genco IPO, and the GasCo Separation.

[5] Reliant Resources provides these services through subsidiary REPs. Applicants state that the REPs are not electric utility companies for purposes of the Act because they do not own or operate physical facilities used for the generation, transmission or distribution of electric energy for sale. Applicants state that the REPs are power marketers under rule 58(b)(1)(v) of the Act.

1. The Electric Restructuring

In the first stage, New REI will form Texas Genco Holdings, Inc. (''Texas Genco Holdings''), as a Texas indirect wholly owned limited partnership. REI will contribute its regulated assets used to generate electric power and energy for sale within Texas and the liabilities associated with those assets (''Texas Genco Assets'') to Texas Genco Holdings. Texas Genco Holdings, in turn, will contribute the Texas Genco Assets to two newly formed limited liability companies, which, in turn, will contribute the assets to a Texas limited partnership, Texas Genco LP. Texas Genco LP will be an electric utility company within the meaning of the Act. Applicants state that Texas Genco Holdings will be a Texas holding company that will qualify for exemption under section 3(a)(1) of the Act.[6]

The next steps relate to the formation of New REI as a holding company for the regulated operations. REI formed New REI as a wholly owned subsidiary.[7] New REI, in turn, will form a special purpose wholly owned subsidiary, Utility Holding LLC, a Delaware limited liability company. Utility Holding LLC will form a special purpose wholly owned subsidiary company, MergerCo, which will merge with and into REI, with REI as the surviving entity. REI common stock will be exchanged for New REI common stock in the merger, and New REI will become the holding company for Utility Holding LLC, REI and its subsidiaries.

REI then plans to convert to a Texas limited liability company, Reliant Energy, LLC (''REI LLC'' or the ''T&D Utility''). The T&D Utility will retain REI's existing transmission and distribution businesses, which will remain subject to traditional utility rate regulation. The T&D Utility will distribute the stock of all its subsidiaries to New REI, including the stock of GasCo, Texas Genco Holdings and

[6] Applicants state that the limited liability companies, GP LLC and LP LLC, are conduit entities that will exist solely to minimize certain Texas franchise tax liability. LP LLC, a Delaware limited liability company, will acquire a 99% limited partnership interest with no voting rights in Texas Genco LP. Applicants state that, because LP LLC will not acquire 10% or more of the voting securities of Texas Genco LP, LP LLC will not be a holding company for purposes of the Act. GP LLC, a Texas limited liability company, will be a holding company because it will acquire the 1% general partnership interest in Texas Genco LP. Applicants state that GP LLC will qualify for exemption under section 3(a)(1) of the Act.

[7] New REI was incorporated in Delaware on December 13, 2000. As part of the Restructuring, on October 9, 2001, REI reincorporated New REI as a Texas corporation.

certain financing and other subsidiaries.[8]

Following the Electric Restructuring, New REI will register as a holding company under section 5 of the Act.

2. The Distribution

As noted above, on May 4, 2001, Reliant Resources completed an IPO of approximately 20% of its common stock. Upon completion of the Electric Restructuring and subject to board approval, market and other conditions, New REI will effect the Distribution by distributing all of the shares it owns in Reliant Resources to New REI's shareholders, effecting the separation of operations into two unaffiliated publicly traded corporations.[9] As a result of the Distribution, Reliant Resources will cease to be an affiliate of New REI for the purposes of the Act.

Prior to the IPO of Reliant Resources' common stock, REI entered into a Master Separation Agreement and associated ancillary agreements with Reliant Resources, providing for the separation of their businesses and assets. The Master Separation Agreement also provides for cross-indemnities that are intended to place sole financial responsibility on Reliant Resources and its subsidiaries for all liabilities associated with the current and historical businesses and operations they conduct, and to place sole financial responsibility for liabilities associated with REI's other businesses with REI and its other subsidiaries. REI and Reliant Resources also agreed to assume, and be responsible for, specified liabilities associated with activities and operations of the other party and its subsidiaries, to the extent performed for, or on behalf of, their respective current or historical businesses. The Master Separation Agreement also contains indemnification provisions under which REI and Reliant Resources will each indemnify the other with respect to breaches by the indemnifying party of the Master Separation Agreement or any ancillary agreements.

The Master Separation Agreement contains provisions relating to certain nuclear decommissioning assets, the exchange of information, provision of information for financial reporting purposes, dispute resolution, and provisions limiting competition between the parties in certain business activities and provisions allocating responsibility for the conduct of regulatory proceedings and limiting positions that may be taken in legislative, regulatory or court proceedings in which the interests of both parties may be affected.

The Distribution will significantly reduce the New REI system's common equity.[10] Applicants believe, however, that the Distribution is both necessary and appropriate because it will have the effect of reducing the business risk profile of the regulated business. Further, Applicants state that New REI's capital structure will be improved significantly with the sale of Texas Genco and securitization of any stranded investment that is anticipated to occur in 2004. Accordingly, Applicants seek authority for the Distribution.

3. Texas Genco IPO

On or before December 31, 2002, New REI expects to conduct an initial public offering of or distribute to shareholders approximately 20% of the common stock of Texas Genco Holdings, the holding company for the Texas Genco Assets or to distribute the stock to New REI's shareholders. The creation of a minority public interest in Texas Genco Holdings will permit the use of the ''partial stock valuation method'' under the Texas Act for purposes of determining the stranded costs associated with REI's regulated generation assets.

Reliant Resources will hold an option to purchase all of New REI's remaining equity interest in Texas Genco LP after the Texas Genco IPO (''Texas Genco Option'').[11] The Texas Genco Option is exercisable in January 2004; therefore, Reliant Resources does not seek authority at this time to exercise the option. The exercise price will be determined by a market-based formula based on the formula employed by the Texas Commission for determining stranded costs under the partial stock valuation method referenced above.

4. The GasCo Separation

The final stage of the restructuring entails the reorganization of GasCo into three separate corporations (''GasCo Separation''). Upon receipt of necessary regulatory approvals, GasCo plans to form two new subsidiary companies, Arkla, Inc. and Minnegasco, Inc., and to contribute to them the Arkla and Minnegasco assets, respectively. GasCo will then dividend the stock of Arkla, Inc. and Minnegasco, Inc. to Utility Holding LLC. GasCo, which will be renamed Entex, Inc. and reincorporated in Texas, will own the Entex assets as well as, through subsidiary companies, the natural gas pipelines and gathering business.

Applicants request the Commission to reserve jurisdiction over the acquisition by New REI of the securities of the to-be-formed gas utility subsidiaries, Entex, Inc., Arkla, Inc. and Minnegasco, Inc., pending completion of the record.[12]

New REI will not qualify for an intrastate exemption immediately after the Electric Restructuring. Pending the GasCo Separation, New REI will not satisfy the standards for exemption under section 3(a)(1) of the Act because GasCo, a material subsidiary with significant out-of-state operations, will not be ''predominantly intrastate in character'' and carry on its business ''substantially in a single state.'' Upon completion of the GasCo Separation, however, Applicants anticipate that New REI and each of its material utility subsidiaries will be incorporated in Texas and will be ''predominantly intrastate in character and carry on their business substantially'' in Texas. Applicants contemplate that, upon completion of the GasCo separation, New REI will file a claim of exemption under rule 2 or apply for an order under section 3(a)(1) of the Act.

C. Affiliate Transactions

Because Applicants contemplate that New REI will qualify for exemption upon completion of the GasCo Separation and, further, that the

[8] The distribution of the stock of REI's subsidiaries, including GasCo and Texas Genco Holdings, will be currently taxable under Texas law. To minimize tax inefficiencies, New REI will hold its utility interests through Utility Holding LLC. Because Utility Holding LLC will be a Delaware company, it will not qualify for exemption under section 3(a)(1) of the Act. Applicants request the Commission to ''look through'' Utility Holding LLC for purposes of analysis under section 3(a)(1). *Compare National Grid Group plc*, Holding Co. Act Release No. 27154 (Mar. 15, 2000) (Commission disregarded intermediate holding companies for purposes of section 11(b)(2) analysis).

[9] As of December 31, 2001, REI owns approximately 83% of Reliant Resources, due to treasury stock repurchases of $189 million by Reliant Resources.

[10] New REI projects its common equity as a percentage of total capitalization (''Common Equity Percentage'') to be approximately 37.1% following the Electric Restructuring but prior to the Distribution. Following the Distribution, New REI projects its Common Equity Percentage to drop to approximately 16.1% (17.2% if calculated without the effect of securitization debt). New REI projects its Common Equity Percentage for the year 2005 to be 15.9% including securitization debt and 27.0% excluding securitization debt.

[11] The retained equity interest will be at least 80%. The Texas Genco Option agreement provides that if Reliant Resources purchases the Texas Genco LP shares, it must also purchase all notes and other receivables from Texas Genco LP then held by New REI at their principal amounts plus accrued interest.

[12] New REI plans to make the acquisition through an intermediate holding company, Utility Holding LLC. Applicants request the Commission to reserve jurisdiction over the request for Utility Holding LLC to acquire the securities of Entex, Arkla and Minnegasco as part of the GasCo separation.

approvals necessary for that separation will be obtained within a year of the initial order, Applicants do not intend to form a service company. New REI requests authority to provide a variety of services to the New REI system companies, in areas such as accounting, rates and regulation, internal auditing, strategic planning, external relations, legal services, risk management, marketing, financial services and information systems and technology. Charges for all services will be on an at-cost basis, as determined under rules 90 and 91 of the Act.

II. Requested Authority

Applicants request an initial order: (1) Authorizing New REI to acquire the securities of the T&D Utility, Texas Genco, L.P., GasCo, Utility Holding LLC, Texas Genco Holdings, GP LLC and LP LLC; (2) granting Texas Genco Holdings and GP LLC an exemption under section 3(a)(1); (3) authorizing the Distribution of the voting securities of Reliant Resources by New REI to the common stock stockholders of New REI; (4) authorizing the sale or distribution of Texas Genco Holdings stock in connection with the Texas Genco IPO; (5) authorizing New REI to retain all nonutility subsidiaries of REI; (6) authorizing REI to provide goods and services to New REI system companies for a period not to exceed one year; and (7) approving the requested financings as outlined below. Applicants also request that they be exempt from the requirement to file Form U–6B–2 because the information contained in that form will be set forth in quarterly Rule 24 Certificates.

A. Financing Request

New REI, on behalf of itself and the Subsidiaries, requests authorization to engage in the following financing transactions for a period of one year from the date of the Commission's initial order (''Authorization Period'').[13]

1. Parameters for Financing Authorization

The effective cost of money on debt financings will not exceed the greater of 500 basis points over the comparable term London Interbank Offered Rate (''LIBOR'') or market rates available at the time of issuance to similarly situated companies with comparable credit ratings for debt with similar maturities and terms.

The dividend rate on any series of preferred securities will not exceed the greater of 500 basis points over LIBOR or a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

Financings will be subject to the following conditions: (1) The maturity of long-term debt will not exceed 50 years and all preferred securities will be redeemed no later than 50 years after issuance; (2) the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security (not including any original issue discount) will not exceed 5% of the principal or total amount of the securities being issued; (3) all ratable long-term debt, preferred securities and preferred stock that is issued to third parties will, when issued, be rated investment grade by a nationally recognized statistical ratings organization (''NRSRO'');[14] and (4) each of the Utility Subsidiaries will maintain common stock equity as a percentage of capitalization of at least 30%.

2. Use of Proceeds

The proceeds from the sale of securities in external financing transactions will be used for general corporate purposes, including: the financing, in part, of the capital expenditures of the New REI system; the refinancing of existing obligations; the financing of working capital requirements of the New REI system; the acquisition, retirement or redemption of securities previously assumed or issued by New REI or its Subsidiaries without the need for prior Commission approval; and other lawful purposes.

3. Proposed Financing Program

The aggregate amount of financing under the authority requested by New REI, exclusive of guarantees and obligations assumed by New REI at the time of the Electric Restructuring, shall not exceed $8 billion at any one time outstanding during the Authorization Period. The types of securities that New REI may issue are described more fully below.

The aggregate amount of external financing under the authority requested by the Subsidiaries, exclusive of guarantees and exempt financings, shall not exceed $4 billion at any one time outstanding during the Authorization Period. The types of securities that the Subsidiaries may issue are described more fully below.

The aggregate amount of nonexempt guarantees shall not exceed $2 billion for the New REI system at any one time outstanding during the Authorization Period.[15]

4. Description of Specific Types of Financing

a. New REI External Financing

Upon completion of the Electric Restructuring, New REI will have outstanding long-term debt, obligations relating to tax-exempt debt issued by governmental authorities (such as pollution control bonds) and obligations relating to trust preferred securities issued by subsidiaries. In addition, New REI will have executed bank facilities that may be utilized in the form of direct borrowings, commercial paper support or letters of credit.

New REI requests authorization to assume the debt and obligations described in the previous paragraph and to replace the bank facilities of REI subsidiaries with bank facilities of New REI at the time of the Electric Restructuring. In addition, New REI requests authority to assume obligations under certain hedging transactions to manage its risk and for other lawful purposes.

New REI also requests authority to issue and sell securities, including common stock, preferred securities (either directly or through a subsidiary), long-term and short-term debt securities and convertible securities and derivative instruments with respect to any of these securities. New REI also requests authorization to enter into obligations with respect to tax-exempt debt issued on behalf of New REI by governmental authorities. These obligations may relate to the refunding of outstanding tax-exempt debt or to the remarketing of tax-exempt debt. New REI seeks authorization to enter into lease arrangements, and certain hedging transactions in connection with issuances of taxable or tax-exempt securities.

(i) New REI External Financing: Common Stock

New REI is authorized under its restated articles of incorporation to

[13] For purposes of this request, the term ''Subsidiary'' shall mean each directly and indirectly owned subsidiary of New REI as well as other direct or indirect subsidiaries that New REI may form after the Electric Restructuring with the approval of the Commission or in reliance on rules or statutory exemptions. The term ''Intermediate Holding Company'' shall mean Utility Holding, LLC, Texas Genco Holdings, Inc. and GP LLC. The term ''Utility Subsidiaries'' shall mean Texas Genco LP, the T&D Utility and GasCo. The term ''Nonutility Subsidiary'' shall mean any subsidiary company other than an Intermediate Holding Company or a Utility Subsidiary.

[14] New REI requests the Commission reserve jurisdiction over its issuance of any security that is rated below investment grade.

[15] This limit applies to guarantees of financial obligations but not to performance guarantees entered into in the normal course of a system company's duly authorized business.

issue 1 billion shares of common stock, par value $.01 per share, and related preferred stock purchase rights. Common stock issued by New REI after completion of the Electric Restructuring will be valued, for purposes of determining compliance with the aggregate financing limitation of $8 billion, at its market value as of the date of issuance (or, if appropriate, at the date of a binding contract providing for the issuance).

New REI proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or negotiated block purchases, up to 7.5 million shares of New REI common stock for allocation under certain incentive compensation plans and certain other employee benefit plans. These acquisitions would comply with applicable law and Commission interpretations then in effect.

New REI proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or negotiated block purchases, up to 4 million shares of New REI common stock under the New REI Investors' Choice Program (or any similar or successor program).

New REI has established a Stockholder Rights Plan under which each share of its common stock will include one right to purchase from New REI a fraction of a share of New REI preferred stock. The rights will be issued under a rights agreement between New REI and a nationally recognized bank that will serve as the rights agent. As currently contemplated, the rights will become exercisable shortly after (i) any public announcement that a person or group of associated persons has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of the outstanding shares of New REI common stock; or (ii) the start of a tender or exchange offer that would result in a person or group of associated persons becoming a 15% owner. New REI expects that the Stockholder Rights Plan will also provide for the rights to be exercisable for shares of (i) New REI common stock in the event of certain tender or exchange offers not approved by the New REI board; and (ii) the common stock of an acquiring company in the event of certain mergers, business combinations, or substantial sales or transfers of assets or earning power. The rights will attach to all certificates representing the outstanding shares of common stock and will be transferable only with these certificates. The Stockholder Rights Plan will provide for the rights to be redeemable at New REI's option prior to their becoming exercisable and for the rights to expire at a date certain.

(ii) New REI External Financing: Preferred Securities

New REI seeks to have the flexibility to issue its authorized preferred stock or other types of preferred securities (including trust preferred securities) directly or indirectly through one or more subsidiaries, including special-purpose financing subsidiaries organized for this purpose. The proceeds of preferred securities would provide an important source of future financing for the operations of, and investments in, businesses in which New REI or its Subsidiaries are authorized to invest. Preferred stock or other types of preferred securities may be issued in one or more series with rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by New REI's board of directors, or a pricing committee or other committee of the board performing similar functions. Preferred securities may be redeemable and may be perpetual in duration. Dividends or distributions on preferred securities will be made periodically and to the extent funds are legally available for this purpose, but may be made subject to terms which allow New REI to defer dividend payments for specified periods. Preferred securities may be convertible or exchangeable into shares of New REI common stock, other forms of equity or indebtedness, or into other securities or assets.

Preferred securities may be sold directly through underwriters or dealers in any manner and for purposes similar to those described for common stock above.

(iii) New REI External Financing: Long-Term Debt

Long-term debt securities could include notes or debentures under one or more indentures (each, the ''New REI Indenture'') or long-term indebtedness under agreements with banks or other institutional lenders directly or indirectly. Long-term debt will be unsecured. Long-term securities could also include obligations relating to the refunding or remarketing of tax-exempt debt issued on behalf of New REI by governmental authorities. Specific terms of any borrowings will be determined by New REI at the time of issuance and will comply in all regards with the parameters on financing authorization set forth above.

(iv) New REI External Financing: Short-Term Debt

New REI seeks authority to issue short-term debt securities, including, but not limited to, institutional borrowings, commercial paper and privately placed notes.

New REI may sell commercial paper or privately placed notes (''commercial paper'') from time to time, in established domestic or European commercial paper markets. Commercial paper may be sold at a discount or bear interest at a rate per annum prevailing at the date of issuance for commercial paper of a similarly situated company.

New REI may, without counting against the limit on parent financing set forth above, maintain back-up lines of credit in connection with one or more commercial paper programs in an aggregate amount not to exceed the amount of authorized commercial paper.

New REI may also set up credit lines for use in general corporate purposes. Credit lines may support commercial paper, may be utilized to obtain letters of credit or may be borrowed against, from time to time, as it is deemed appropriate or necessary.

(v) New REI External Financing: Risk Management Devices

New REI requests authority to assume and to enter into hedging arrangements intended to reduce or manage the volatility of financial or other business risks to which New REI is subject, including, but not limited to, interest rate swaps, caps, floors, collars and forward agreements or any other agreements or derivative instruments intended to reduce or manage risks to which New REI is or may become exposed (''Hedging Instruments''). The transactions would be for fixed periods and stated notional amounts. New REI may employ interest rate hedges and other derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued under this authorization or an applicable exemption by, in effect, synthetically (i) converting variable rate debt to fixed-rate debt; (ii) converting fixed-rate debt to variable rate debt; (iii) limiting the economic or accounting impact of changes in interest rates resulting from variable rate debt; and (iv) managing other risks that may attend outstanding securities. Transactions will be entered into for fixed or determinable periods. Thus, New REI will not engage in speculative transactions. New REI will only enter into agreements with counterparties having a senior debt rating at the time

the transaction is executed of at least investment grade as published by a NRSRO (''Approved Counterparties'').

In addition, New REI requests authorization to assume and to enter into hedging transactions with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Anticipatory Hedges will only be entered into with Approved Counterparties, and will be used to fix and/or limit the risk associated with any issuance of securities through appropriate means, including (i) forwards and futures (a ''Forward Sale''); (ii) the purchase of put options (a ''Put Options Purchase''); (iii) a purchase of put options in combination with the sale of call options (a ''Collar''); (iv) some combination of a Forward Sale, Put Options Purchase, Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges; or (v) other financial derivatives or other products including Treasury rate locks, swaps, forward starting swaps, and options on the foregoing. Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade (''CBOT''), ''off-exchange'' through the execution of agreements with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. New REI or a Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. New REI or a Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases. New REI and its Subsidiaries seek authority to modify the terms and conditions of any Hedging Instruments or Anticipatory Hedges that are put in place prior to the Electric Restructuring.

New REI and its Subsidiaries will comply with Statement of Financial Accounting Standards (''SFAS'') 133 (''Accounting for Derivatives Instruments and Hedging Activities'') and SFAS 138 (''Accounting for Certain Derivative Instruments and Certain Hedging Activities'') or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board.

b. Subsidiary External Financings

The Utility Subsidiaries will have outstanding long-term debt and trust preferred securities upon completion of the Electric Restructuring. In addition, the Utility Subsidiaries will have a receivables facility and bank facilities that may be utilized in the form of direct borrowings, commercial paper support or letters of credit.

To the extent not otherwise exempted, the Subsidiaries request authority to issue and sell securities, including common equity, preferred securities (either directly or through a subsidiary), long-term and short-term debt securities and derivative instruments with respect to any of the foregoing on the same terms and conditions as discussed above for New REI, except that Subsidiary debt may be secured or unsecured. The Subsidiaries also request authorization to enter into obligations with respect to tax-exempt debt issued on behalf of a Subsidiary by governmental authorities in connection with the refunding of outstanding tax-exempt debt assumed by New REI at the time of the Electric Restructuring. The Subsidiaries also request authority to enter into hedging transactions to manage their risk in connection with the issuance of securities.

c. Guarantees, Intra-System Advances and Intra-System Money Pool

New REI requests authorization to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of its Subsidiaries and to enter into guarantees of non-affiliated third party obligations in the ordinary course of New REI's business (''New REI Guarantees'') in an amount, together with the Subsidiary Guarantees (defined below), not to exceed $2 billion outstanding at any one time (not taking into account obligations exempt under rule 45). Any guarantees shall also be subject to the limitations of rule 53(a)(1) or rule 58(a)(1), as applicable.

Certain of the guarantees referred to above may be in support of obligations that are not capable of exact quantification. In these cases, New REI will determine the exposure under the guarantee by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. As appropriate, these estimates will be made in accordance with generally accepted accounting principles and/or sound financial practices.

The Utility Subsidiaries request authority to provide to other Subsidiaries guarantees and other forms of credit support, subject to the terms and conditions outlined above.[16]

Each of the Intermediate Holding Companies also seeks authority to issue guarantees and other forms of credit support to direct and indirect subsidiary companies, subject to the terms and conditions outlined above.

New REI will establish and manage a centralized system of intercompany borrowings and investments (''Money Pool'') which will be used as a short-term cash management system by New REI and its Subsidiaries. Participants in the Money Pool will include New REI and certain subsidiaries of New REI. New REI will not borrow from the Money Pool.

The Utility Subsidiaries may also finance their capital needs through borrowings from New REI, directly or indirectly through one or more Intermediate Holding Companies

Each of the Intermediate Holding Companies requests authority to issue and sell securities to its respective parent companies and to acquire securities from its subsidiary companies.

d. Changes in Capital Stock of Majority Owned Subsidiaries

Request is made for authority to change the terms of any 50% or more owned Subsidiary's authorized capital stock capitalization or other equity interests by an amount deemed appropriate by New REI or other intermediate parent company. A Subsidiary would be able to change the par value, or change between par value and no-par stock, without additional Commission approval.

e. Payment of Dividends Out of Capital or Unearned Surplus

As a result of the accounting treatment for the Restructuring, New REI and the Subsidiaries are requesting authority to declare and pay dividends out of capital or unearned surplus. The dividends paid by these entities will not exceed 75% of net income, based on a rolling five-year average. Although the dividend policy of New REI has not been finally determined, it is contemplated that New REI will seek to maintain a pay-out ratio comparable to the current ration.

f. Financing Subsidiaries

New REI proposes to organize and acquire, directly or indirectly, the common stock or other equity interests of one or more subsidiaries (collectively,

[16] New REI states that it is contemplated that the Nonutility Subsidiaries will rely on the exemptions provided by rules 45 and 52.

the ''Financing Subsidiary'') for the purpose of effecting various financing transactions from time to time through the Authorization Period involving the issuance and sale of up to an aggregate of $1 billion (cash proceeds to New REI or the respective subsidiary company) in any combination of common stock, preferred securities, debt securities, stock purchase contracts and stock purchase units, as well as common stock issuable under stock purchase contracts and stock purchase units, all as defined below. Any security issued under the requested authority will be appropriately disclosed in the system's financial statements. No Finance Subsidiary shall acquire or dispose of, directly or indirectly, any interest in any utility asset, as that term is defined under the Act, without first obtaining any necessary approval.

The business of the Financing Subsidiary will be limited to effecting financing transactions for New REI and its associates. In connection with these transactions, New REI or the Subsidiaries may enter into one or more guarantees or other credit support agreements in favor of the Financing Subsidiary.

Any Financing Subsidiary shall be organized only if, in management's opinion, the creation and utilization of the Financing Subsidiary will likely result in tax savings, increased access to capital markets and/or lower cost of capital for New REI or the Subsidiaries.

Each of New REI and the Subsidiaries also requests authorization to enter into an expense agreement with its respective financing entity, under which it would agree to pay all expenses of the entity. Any amounts issued by the financing entities to third parties will be included in the additional external financing limitation for the immediate parent of the financing entity. However, the underlying intra-system mirror debt and parent guarantee will not be included.

REI currently has two financing subsidiaries (''FinanceCos''). The FinanceCos are Delaware limited partnerships whose limited partnership interests are wholly owned, directly or indirectly, by REI. Each of the FinanceCos has issued a series of debt, the proceeds of which have been used to purchase separate series of cumulative preference stock of REI. Dividends on the preference stock accrue based on the net interest requirements on the debt, subject to reduction of any payments previously made by REI under REI support agreements relating to each series of debt. After giving effect to this credit, REI must pay aggregate cash dividends on the preference stock equal to the lesser of the aggregate amount of interest then payable on the debt or its excess cash flow (excess funds of REI remaining after taking into account its cash requirements and other expenditures required by sound utility financial and management practices).

g. Authority To Reorganize Nonutility Interests

New REI proposes to restructure its nonutility interests from time to time as may be necessary or appropriate. New REI will engage, directly or indirectly, only in businesses that are duly authorized, whether by order or rule under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11702 Filed 5–9–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12070]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Transfinancial Holdings, Inc., Common Stock, $.01 par value)

May 6, 2002.

Transfinancial Holdings, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer states in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it was incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On April 9, 2002, the Board of Directors of the Issuer unanimously approved a resolution to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw the Security from listing on the Exchange, the Issuer represents that on April 29, 2002, a certificate of dissolution was filed with the Secretary of the State Delaware. Trading of the Security on the Amex was halted on April 29, 2002. The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before May 28, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–11744 Filed 5–9–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 22471, May 3, 2002].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, May 8, 2002, at 9:30 a.m.

CHANGE IN THE MEETING: Deletion of item.

The following item will not be considered at the open meeting scheduled for Wednesday, May 8, 2002: The Commission will not hear oral argument on an appeal by Daniel R. Lehl, et al., from the decision of an administrative law judge.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

The Office of the Secretary at (202) 942–7070.

Dated: May 7, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11875 Filed 5–8–02; 12:09 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 13, 2002:

A closed meeting will be held on Monday, May 13, 2002, at 10 a.m., and an open meeting will be held on Tuesday, May 14, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the close meeting scheduled for Monday, May 13, 2002, will be:

Formal orders of investigation;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Tuesday, May 14, 2002, will be:

1. The Commission will consider whether to jointly adopt a new rule with the Commodity Futures Trading Commission (''CFTC'') generally requiring that the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities, and that trading in any security futures product halt when a regulatory halt is instituted with respect to a security or securities underlying the security futures product by the national securities exchange or national securities association listing the security. The rule being considered would set forth more specifically how the exchange's or association's rules can satisfy provisions added to the Commodity Exchange Act (''CEA'') and the Securities Exchange Act of 1934 (''Exchange Act'') by the Commodity Futures Modernization Act of 2000. The Commission will also consider whether to issue a joint interpretation with the CFTC of the statutory requirement under the CEA and the Exchange Act that procedures be put in place for coordinated surveillance among the markets trading security futures products and any market trading any security underlying the security futures products or any related security.

2. The Commission will consider whether to propose amendments to Rules 134, 156, and 482 under the Securities Act of 1933; Rule 34b–1 under the Investment Company Act of 1940; and four investment company registration forms (Forms N–1A, N–3, N–4, and N–6). The proposed amendments would require enhanced disclosure in mutual fund advertisements and are designed to encourage advertisements that convey balanced information to prospective investors, particularly with respect to past performance. The proposed amendments also would implement a provision of the National Securities Markets Improvement Act of 1996 by eliminating the requirement that Rule 482 advertisements for an investment company contain only information the substance of which is included in the investment company's statutory prospectus.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: May 7, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11876 Filed 5–8–02; 12:18 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Pinnacle Business Management, Inc.; Order of Suspension of Trading

May 7, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pinnacle Business Management, Inc. (''PCBM'') because of questions regarding the accuracy of assertions made by PCBM, and by others, in Commission filings and in documents sent to and statements made to investors concerning among other things, a planned spin-off by PCBM of a subsidiary in May 2002, the initial price at which the subsidiary will trade after the spin-off has been completed, and the conditions bearing on the subsidiary's chances of achieving an American Stock Exchange listing.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, May 8, 2002 through 11:59 p.m. EDT, on May 21, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11877 Filed 5–8–02; 1:33 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45873; File No. SR–CSE–2002–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to the Introduction of Order Delivery and Automated Response on the Cincinnati Stock Exchange, Inc.

May 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder, [2] notice is hereby given that on April 22, 2002, the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CSE Rule 11.9, National Securities Trading System (''NSTS''), to modify CSE's execution functionality within the CSE Over-the-Counter (''OTC'') Unlisted Trading Privileges (''UTP'') system (''CSE OTC–UTP System'') [3] from a process of automatically matching and executing like-priced displayed orders and quotes to an optional process of delivering orders to quoting CSE members and requiring automated responses from such members back to the CSE OTC–UTP System. The text of the proposed rule change is set forth below. Proposed new language is in italics.

Chapter XI
Trading Rules
Rule 11.9(i)

(1) No change.

(2) The OTC–UTP System offers two modes of order interaction selected by members:

(a) *If automatic execution selected, the OTC–UTP System shall match and execute like-priced order, bids and offers in Nasdaq/NM Securities on an order-by-order basis only at the specific instruction of Users, including Designated Dealers. Subject to the obligations of best execution, Users may choose to execute like-priced orders without regard for the price/time and agency/principal priorities set forth in Rules 11.9(l) and (m).*

(b) *If order delivery and automated response selected, the OTC–UTP System will deliver contra-side orders against displayed orders and quotations on an order-by-order basis and only at the specific instruction of Users, including Designated Dealers. To be eligible for order delivery service, Users must demonstrate to CSE examiners that the User's system can automatically process the inbound order and respond appropriately within 1 second.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase the flexibility of CSE execution systems to accommodate member needs. Specifically, CSE proposes to modify CSE's execution functionality within the CSE OTC–UTP System from a process of automatically matching and executing like-priced displayed orders and quotes to an optional process of delivering orders to quoting CSE members and requiring automated responses from such members back to the CSE OTC–UTP System. CSE is proposing this modification to facilitate a diverse membership base while promoting a fair and orderly market. CSE members that operate as electronic communications networks (''ECNs'') [4] or alternative trading systems (''ATSs'') subject to SEC Regulation ATS,[5] as well as members that act as Designated Dealers or specialists on CSE will have the option of selecting the type of centralized execution system that best fits their business model.

Currently, NSTS functions solely in an automatic execution mode. In an automatic execution system like NSTS, a Designated Dealer's quotation is held in NSTS, and NSTS executes any like-priced contra-side order against the dealer's quotation. NSTS then informs the Designated Dealer and the contra-side CSE member that the quotation and the order have been executed by delivering execution messages to both parties.

With the advent of ECN/ATS trading on CSE, members have expressed concern that CSE's automatic execution system exposes them to significant multiple execution liability. Given the speed with which ECN/ATSs operate, it is likely that displayed quotations will be subject to internal matches at the same time as another CSE member attempts to execute against the same quotations. When faced with a similar dilemma, the Nasdaq Stock Market, Inc. permitted ECN/ATSs to remain on SelectNet (an order delivery system) for inbound executions against the ECN/ATSs' displayed quotations rather than requiring them to migrate to the automatic execution methodology of the Nasdaq National Market Execution System (''NNMS'').[6] Nasdaq even amended its Intermarket Trading System (''ITS'')/Computer Assisted Execution System (''CAES'') (together ''ITS/CAES'') definitions and functionality to permit ECN/ATSs to operate in an order delivery format when interacting with inbound commitments from ITS. Similarly, CSE now proposes to permit members to select order delivery and automated response for order interaction with displayed quotations within the CSE OTC–UTP System or to continue interacting through CSE's automatic execution facility.

In an order delivery and automated response system, a member's quotation or displayed order will be held in the CSE OTC–UTP System, and when a contra-side order is received in the CSE OTC–UTP System, CSE will immediately forward the order message to the quoting member, who will be obligated by rule to instantaneously respond to the order message. Moreover, the quoting member must have a demonstrated capability to instantaneously respond to the order message. On receipt of the order message delivered by CSE, the quoting member will automatically determine whether its quote is still active. If so, the member will automatically deliver to the CSE OTC–UTP System matched orders representing its quote and the contra-side for execution. If the member's quote is in the process of changing due to a prior internal match at the displayed price, consistent with the Firm Quote Rule,[7] the member will reject the inbound order and send it back to the CSE OTC–UTP System. The CSE OTC–UTP System will then automatically send a cancellation message to the member submitting the order. The entire duration of the order delivery and automated response process likely will be less than one second.

CSE reiterates that members must demonstrate the capacity to accept inbound orders and to automatically respond to the CSE OTC–UTP System before they will be permitted use of this

[3] CSE proposed the creation of the CSE OTC–UTP System in proposed rule change CSE–2001–04. *See* Securities Exchange Act Release No. 45405 (February 6, 2002), 67 FR 6558 (February 12, 2002).

[4] ECNs are defined in SEC Rule 11Ac1–1(a)(8), 17 CFR 240.11Ac1–1(a)(8), as any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part.

[5] 17 CFR 242.300–303.

[6] *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) in which Nasdaq designated SelectNet as the link to ECNs pursuant to the SEC's Order Handling Rules. *See* Securities Exchange Act Release No. 38156 (January 10, 1997), 62 FR 2415 (January 16, 1997).

[7] 17 CFR 240.11Ac1–1.

functionality. Moreover, CSE Rule 11.9(i)(2) shall provide that the CSE OTC–UTP System will offer order delivery and automated response subject to the requirement that members demonstrate the capability to respond in an automated manner. Therefore, by rule and through demonstrated capacity verified by CSE examiners prior to operation, the CSE will reduce the risk of multiple execution liability, while ensuring that members comply with their obligations under the Firm Quote Rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, the Exchange believes that the proposal is consistent with Section 6(b)(8) of the Act[10] in that it is not designed to impose any burden on competition not necessary or appropriate in furtherance of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–2002–04 and should be submitted by May 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11746 Filed 5–9–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45851; File No. SR–NASD–2002–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Extend a Pilot Amendment to NASD Rule 4120 Regarding Nasdaq's Authority To Initiate and Continue Trading Halts

April 30, 2002

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend a pilot amendment to NASD Rule 4120, which clarified Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq. The proposal would extend the pilot through September 30, 2002. There is no new proposed rule language.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 11, 2001, Nasdaq filed with the Commission a proposed rule change to clarify Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq.[6] On July 27, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change, which requested that the Commission approve the proposed rule change on a three-month pilot basis, expiring on October 27, 2001.[7] Also on July 27, 2001, the Commission approved the proposed rule change and Amendment No. 1.[8] On September 27, 2001, Nasdaq filed a proposed rule change to extend the pilot period for the rule through January 27, 2002,[9] and on January 23, 2002, Nasdaq filed to extend the pilot period through April 30, 2002.[10]

As a result of the decentralized and electronic nature of the market operated by Nasdaq, the price and volume of transactions in a Nasdaq-listed security may be affected by the misuse or malfunction of electronic systems, including systems that are linked to, but not operated by, Nasdaq. In circumstances where misuse or malfunction results in extraordinary market activity, Nasdaq believes that it may be appropriate to halt trading in an affected security until the system problem can be rectified. In the period during which the rule change has been in effect, Nasdaq has not had occasion to initiate a trading halt under the rule. Nevertheless, Nasdaq believes that the rule is an important component of its authority to maintain the fairness and orderly structure of the Nasdaq market. Accordingly, Nasdaq believes the rule should remain in effect on an uninterrupted basis.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 15A of the Act,[11] with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that a registered national securities association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Instinet Corporation (''Instinet'') has commented on the proposed rule change. Nasdaq has filed a proposed rule change to modify the rule in certain respects and to make the rule permanent.[13] Nasdaq believes that the amendments to the rule proposed in SR–NASD–2001–75 respond to the concerns expressed by Instinet without impairing the flexibility that Nasdaq believes the rule must retain in order for the rule to assist Nasdaq in meeting its overarching responsibility to maintain the fairness and orderly structure of the Nasdaq market. Pending Commission action on SR–NASD–2001–75, Nasdaq believes that the pilot period of the current rule should be extended to allow the rule to remain in effect on an uninterrupted basis.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission finds good cause to waive the 5-day pre-filing notice requirement and the 30-day operative delay because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to operate continuously through September 30, 2002. For these reasons, the Commission finds good cause to waive both the 5-day pre-filing requirement and the 30-day operative waiting period.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–14 and should be submitted by May 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11745 Filed 5–9–02; 8:45 am]

BILLING CODE 8010–01–P

[6] Securities Exchange Act Release No. 44307 (May 15, 2001), 66 FR 28209 (May 22, 2001)(SR–NASD–2001–37).

[7] *See* July 27, 2001 letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation, Commission.

[8] Securities Exchange Act Release No. 44609 (July 27, 2001), 66 FR 40761 (August 3, 2001)(SR–NASD–2001–37).

[9] Securities Exchange Act Release No. 44870 (September 28, 2001), 66 FR 50701 (October 4, 2001) (SR–NASD–2001–60).

[10] Securities Exchange Act Release No. 45344 (January 28, 2002), 67 FR 5022 (February 3, 2002)(SR–NASD–2002–14).

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(b)(6).

[13] Securities Exchange Act Release No. 45355 (January 29, 2002), 67 FR 5351 (February 5, 2002)(SR–NASD–2001–75).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3406]

State of Maryland; Disaster Loan Areas

As a result of the President's major disaster declaration on May 1, 2002, I find that Calvert, Charles and

Dorchester Counties in the State of Maryland constitute a disaster area due to damages caused by a tornado occurring on April 28, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 1, 2002 and for economic injury until the close of business on February 3, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Anne Arundel, Caroline, Prince George's, St. Mary's, Talbot and Wicomico Counties in the State of Maryland; Sussex County in the State of Delaware; and Fairfax, King George, Prince William and Stafford Counties in the Commonwealth of Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 340612. For economic injury the number is 9P3500 for Maryland; 9P3600 for Delaware; and 9P3700 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 2, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–11724 Filed 5–9–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4015]

Culturally Significant Objects Imported for Exhibition Determinations: ''Bernardo Bellotto: Views of Imperial Vienna''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, ''Bernardo Bellotto: Views of Imperial Vienna,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Clark Art Institute, Williamstown, Massachusetts, from on or about June 16, 2002, to on or about September 2, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: May 3, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–11778 Filed 5–9–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4014]

Culturally Significant Objects Imported for Exhibition Determinations: ''Josef Hoffmann: Homes of the Wittgensteins''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, ''Josef Hoffmann: Homes of the Wittgensteins,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Clark Art Institute, Williamstown, Massachusetts, from on or about June 16, 2002, to on or about September 2, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: May 3, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–11777 Filed 5–9–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4013]

Culturally Significant Objects Imported for Exhibition Determinations: ''Projects 76: Francis Alÿs''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999,

as amended, I hereby determine that the objects to be included in the exhibition ''Projects 76: Francis Alÿs,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, NY from on or about June 29, 2002 to on or about September 30, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 6, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–11776 Filed 5–9–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Second Tier Environmental Impact Statement: Montgomery, Warren, Lincoln and St. Charles Counties, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Second Tier Environmental Impact Statement (EIS) will be prepared for proposed improvements to a portion of Interstate 70 (identified as SIU #7) in Montgomery, Warren, Lincoln, and St. Charles Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy J. Casey, Environmental Projects Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101, Telephone: (573) 638–2620 or Kathyrn P. Harvey, Project Development Liaison Engineer, Missouri Department of Transportation, 105 West Capitol Avenue, PO Box 270, Jefferson City, MO 65102, Telephone: (573) 526–5678.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare a Second Tier EIS to investigate possible improvements to a 36-mile section of Interstate 70 (I–70), from Milepost 174 (just west of Route 19) in Montgomery City, Missouri to the beginning of the existing six-lane section of I–70 immediately east of the Lake St. Louis Boulevard exit (Exit 214) in Lake St. Louis, Missouri. The study will include above five (5) miles on each side of existing I–70.

The I–70 First Tier EIS process was initiated in January 2000. Its purpose was to evaluate approaches to improving the safety and efficiency of travel on I–70 between suburban Kansas City and suburban St. Louis (approximately 200 miles). To meet these goals, seven strategies were evaluated. These strategies included (1) taking no action, (2) implementing transportation system management methods, (3) providing other modes of transportation, (4) upgrading and improving this section of the existing I–70, (5) constructing a new limited-access highway on new or partially-new location, and (6) implementing a combination of the above strategies. After detailed analysis and public review, widening and reconstructing the existing I–70 was identified as the preferred general approach to improving the interstate corridor. In July 2001, the Draft First Tier EIS was published. A 45-day comment period, which included seven public hearings, followed publication of the draft. In November 2001, the Final First Tier EIS was published, with a Record of Decision published in December 2001.

The First Tier EIS recommended that for the second tier environmental studies, the 200-mile I–70 corridor be divided into seven sections of independent utility (SIU). The intent of the Second Tier EIS is to build on and extend the work of the first tier EIS for improving I–70 as part of the state's long-range transportation plan. Each SIU will be evaluated to the appropriate level of detail (CE, EA, or EIS) within the NEPA process.

Given the current and projected traffic volumes, and the dated design of existing I–70 (Some portions date from as early as 1956 as the first construction in the United States on the interstate highway system), improvements to the I–70 corridor are considered critical to provide for a safe, efficient, and economical transportation network that will meet traffic demands in the state and for national travelers. As such, the range of alternatives carried forward from the first Tier EIS has been expanded for SIU #7. At the easternmost end of the study area, three conceptual corridors (two north and one to the south) were developed and will be further studied as potential locations for a relocated I–70, along with the alternative of widening and reconstructing the existing highway. These conceptual corridors will be further examined based on the need to reduce traffic congestion, address roadway deficiencies, improve safety, and enhance system linkage in the St. Louis metropolitan area.

For the second tier effort, a scoping process has been initiated that involves all appropriate federal and state agencies. This coordination will continue throughout the study as an ongoing process. An intensive public information effort will be initiated, and will include those agencies, private organizations, and citizens that have previously expressed or are known to have interest in this proposal. This effort also will inform the public living in the study area and those who travel on this section of I–70 from across the nation with the intent of capturing their comments for and about the study. Public informational meetings will be held across the study area to engage the regional community in the decision-making process and to obtain public comment. In addition, a public hearing will be held to present the findings of the Second Tier Draft EIS (DEIS). Public notice will be given concerning the time and place of informational meetings and public hearings. The Second Tier DEIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Second Tier EIS for SIU #7 should be directed to the FHWA or MoDOT at the addresses previously provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 25, 2002.

Peggy J. Casey,

Environmental Project Engineer, Jefferson City.

[FR Doc. 02–11766 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10258, Notice 2]

NovaBUS, Inc.; Denial of Application for Decision of Inconsequential Noncompliance

NovaBUS, Inc. (Nova) of Roswell, New Mexico, manufactured a number of buses that were equipped with one of two types of auxiliary lamp systems. Both of these lamp systems are wired to flash. Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices, and Associated Equipment,'' requires that all lamps, except those specified, be wired to be steady burning. Nova determined that these buses fail to comply with FMVSS No. 108 and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Nova has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published in the **Federal Register** (66 FR 41307) on August 7, 2001. Opportunity was afforded for public comment until September 6, 2001. No comments were received.

In FMVSS No. 108, paragraph S5.5.10 requires that, other than turn signal lamps, hazard warning signal lamps, school bus warning lamps, and headlamps and side marker lamps wired to flash for signaling purposes, all other lamps shall be wired to be steady burning.

Between January 1994 and March 2001, Nova produced 742 buses with optional deceleration lamps that flash at a rate related to the deceleration of the vehicle. These lamps are amber and are located on the rear center of the bus.

During the same period of time, Nova also produced 1,819 buses with ''hoodlum'' lamps that flash when the driver activates a switch. The purpose of these lamps is to provide an alert to the police or public that a dangerous situation is occurring on the bus and that the driver requires assistance. These lamps are green and are located on the top front and rear of the bus.

Nova supported its application for inconsequential noncompliance by stating the following:

> The [deceleration and hoodlum] lights do not pose a safety risk to the bus, passengers, driver, or other vehicles on the roadway. They in no way interfere with the normal operation of the bus. Their size, location, color, and flashing pattern make it impossible to confuse them with stop and turn lights. There are no other green lights on the vehicle. There is a slight chance the amber lens color may be confused with hazard lights. However, this is not a hindrance as the [deceleration] and hazard lights heighten other drivers' awareness of the bus.
>
> These lights were requested by our customers to help attract attention to the buses in the stated situations. Since the requirement that ''all other lamps shall be wired to be steady burning'' applies to Nova as an [original equipment manufacturer] but not to our customers, Nova believes these lights would not be changed to be steady burning if a recall process was executed.

Nova no longer offers these options and is now compliant with [FMVSS No. 108].

The agency has reviewed the application and has decided that the noncompliance is not inconsequential to motor vehicle safety. Regarding the flashing amber lamps, the standard states explicitly that only certain original equipment lamps are permitted to flash. The main reason for limiting the flashing function to these lamps is to minimize confusion that may be caused to other drivers who observe the flashing lights. If manufacturers include a flashing function in other lamps, the importance of the safety meaning of required lamps can be diminished. Standardization of lighting functions is paramount to the necessary and instant recognition of their meaning by other drivers.

This concern was expressed by the agency in a March 1996, legal interpretation to the Gillig Corporation (Gillig). Gillig asked whether it was permitted to install four amber lamps that would act as supplemental stop lamps on its buses. These four lamps would flash when the brake pedal was depressed and be extinguished when the pedal was released. The agency stated that this was not permitted, as it could impair the effectiveness of the required red brake lamps. When confronted with an array of red steady burning lamps (the required ones) and amber flashing ones (the ones Gillig wished to add), the agency said that there is a strong likelihood of momentary confusion in the mind of a driver following the vehicle. Quick understanding of and appropriate reaction to motor vehicle safety signals is fundamental to safe motor vehicle operation.

The agency also expressed a similar view in an August 1999 legal interpretation in response to a request from the law firm of Helfgott and Karas, P.C. A client of this firm wanted to install a steady burning amber lamp in the rear of the vehicle that would be illuminated whenever the ignition was activated and the brake lamps were not activated. In this interpretation, the agency stated that:

> Traffic safety is enhanced by the familiarity of drivers with established lighting schemes, which facilitates their ability to instantly and unhesitatingly recognize the meaning a lamp conveys and to respond to it. Any modification to the required lamps or any supplemental lamp that could be perceived to have signals different from the required functions when these functions are operating, or could be perceived incorrectly as signals from required functions would be deemed by us to impair the effectiveness of the required lighting.

Regarding the green ''hoodlum'' lamps, the agency addressed a similar issue in an April 2001 interpretation to Peter Hoffman of I.D. Lite Products Group, Inc. (I.D. Lite). I.D. Lite asked whether it would be permitted to include a green lamp that highlights signage on commercial vehicles. The agency stated that, because FMVSS No. 108 only allows the use of white, red, or amber lamps, a green lamp would not be permitted.

Also regarding the ''hoodlum'' lamps, the agency issued an interpretation in the early 1970s (the exact date could not be found in the interpretation database) in response to the Flxible Company (Flxible). Flxible asked whether a flashing ''hoodlum warning system'' that was requested by the city of Boston, Massachusetts would be allowable. The agency stated that, after January 1, 1972, this lamp would not be permitted because of the requirements limiting the flashing function to certain lamps.

Nova supported its application by stating that the lamps do not pose a safety risk. It does not explain what leads it to believe that there is no possibility of confusing the subject amber lamps with required lamps or why flashing green lamps also would not confuse observers. It does admit that there is ''a slight chance'' that the amber ones could be confused with the hazard lamps. The fact remains that they will attract attention, while having no readily apparent safety meaning, given that they are unique in the motor vehicle environment. This dilutes driver attention that needs to be focused on the driving task.

In addition, Nova states that because its customers specifically requested these noncompliant lamps and the agency cannot force the customers to return the buses to make them compliant, it would be unlikely they would return the vehicles in a recall campaign. This does not persuade us to grant the application. It is necessary that Nova notify its customers that the vehicles it sold them were noncompliant. It must also explain to the customers why they are noncompliant and the potential consequences of the noncompliance. If a large percentage of owners decide not to return their vehicles for remedy, the agency may investigate whether the Nova notification was adequate, and further action could be required.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety, and that it should not be exempted from the notification and remedy requirements of the statute. Accordingly, its application is hereby denied.

(49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: May 6, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–11714 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–01–10411; Notice 2]

Reliance Trailer Company, LLC; Grant of Application for Decision of Inconsequential Noncompliance

Reliance Trailer Company, LLC, of Spokane, Washington (''Reliance''), has determined that 26 of its dump body trailers, manufactured between February and June 2001, fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 224, ''Rear Impact Protection,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defects and Noncompliance Reports.''

On May 29, 2001, Reliance submitted a petition to the agency and requested that it be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

We published a notice of receipt of the application on August 24, 2001, affording an opportunity to comment (66 FR 44663). We did not receive any comments on the notice. This notice grants the application.

The dump body trailers Reliance manufactured between February and June 2001 do not comply with FMVSS No. 224, ''because their wheels were located farther ahead of the 12″ wheels back dimension,'' and hence do not qualify for exclusion from FMVSS No. 224. Paragraph S4 of FMVSS No. 224 defines a wheels back vehicle as a trailer or semitrailer whose rearmost axle is permanently fixed and is located such that the rearmost surface of tires of the size recommended by the vehicle manufacturer for the vehicle on that axle is not more than 305 mm [12 inches] forward of the transverse vertical plane tangent to the rear extremity of the vehicle.'' Reliance's Part 573 report acknowledged that the 26 affected dump body trailers are not in compliance with FMVSS No. 224, since the rearmost surface of their tires must be 16″–18″ forward of the rear extremity of the trailers to accommodate asphalt lay down equipment used in road construction.

Reliance supported its petition for a determination of inconsequential noncompliance with the following reasons:

1. *The noncompliance has no safety concerns*—Reliance knows ''of no rear end collisions, involving injuries, with this type of trailer.'' Typical hauls of these trailers are short and have minimal amount of time traveling on highways compared with most freight trailers.

2. *There is no practical way to remedy the noncompliance*—''Currently, no one has been able to get paver manufacturers to revise, or users to retrofit all their equipment so that under-ride could be accommodated.'' Reliance stated that ''any device behind the tires will interfere with [the trailer's] operation unless it can be moved out of the way when [the] dumping takes place.''

3. *NHTSA granted temporary exemptions to competitors and similarly designed trailers*—Reliance noted that NHTSA granted a renewal of a temporary exemption from FMVSS No. 224 to Beall Trailers of Washington, Inc., another manufacturer of dump body trailers; the agency also granted a temporary exemption to Dan Hill & Associates, and Red River Manufacturing, Inc., manufacturers of trailers having similar interference problems with paving equipment.

4. *Reliance will aggressively proceed to conduct remedial activities*—Reliance will conduct ''a review of paving equipment that these trailers mate with to determine if they can be retrofitted or modified to accommodate trailers with tires located within 12″ of the rear.'' Further, Reliance ''will aggressively proceed to design, build, test and provide prototypes to determine the feasibility and usefulness of these devices.''

Based on the above stated reasons, Reliance requested that the agency grant the inconsequential petition. Our analysis of the Reliance request follows.

Reliance implied that the noncompliance should cause no safety concerns since Reliance knows ''of no rear end collisions, involving injuries, with this type of trailer.'' This lack of knowledge by Reliance of injury-producing crashes is not convincing evidence that such designs present no safety risk. In promulgating FMVSS No. 224, NHTSA concluded that the limit for a ''wheels back vehicle'' should be set at 12 inches, and that vehicles with their rearmost tires positioned farther forward than that would present undue safety risk. While NHTSA also does not have evidence of any passenger car underride rear impact crashes with rear discharge asphalt dump body trailers, there is no reason to conclude that such trailers would be any less vulnerable to real-end crashes than other types of trailers in similar use. Nevertheless, due to the fact that only 26 trailers are involved, the safety risk is not conclusive.

Reliance stated that there is no practical way to remedy the noncompliance at a reasonable cost without interfering with the trailer's operation. In order to bring the 26 trailers in question into compliance, their rear axles would have to be repositioned farther rearward. For vehicles that have already been built, NHTSA agrees that this would be a costly modification. NHTSA also agrees that such an alteration may render the trailers unusable for their intended purpose, because with the axles farther rearward they may not be able to be properly positioned for unloading asphalt into the paving equipment with which they have to interact.

Reliance also noted the fact that the agency has granted temporary exemptions to competitors of similarly designed trailers, based partially on the same reasons. Reliance submitted a petition for a temporary exemption from FMVSS No. 224, for its future production of the same design as the 26 dump body trailers that are the subject of this notice. On October 22, 2001, we granted a temporary exemption to Reliance (66 FR 53471).

Finally, Reliance stated that it ''will aggressively proceed to design, build, test and provide prototypes to determine the feasibility and usefulness of these devices.'' Since the above exemption was granted as temporary, NHTSA anticipates that Reliance will make progress in developing a design that is fully compliant.

Accordingly, the agency has decided that Reliance has met its burden of persuasion that the noncompliance described herein is inconsequential to motor vehicle safety and its application is granted. Therefore, Reliance Trailer Company, LLC is not required to provide notification and remedy of the noncompliance as required by 49 U.S.C. 30118 and 30120.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: May 6, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–11715 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 612X)]

CSX Transportation, Inc.—Abandonment Exemption-in Greenville, SC

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1.31 miles of rail line between Valuation Station 47+50 and Valuation Station 115+11.5 in Greenville, Greenville County, SC. The line traverses United States Postal Service Zip Code 29601.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 11, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 20, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 30, 2002, with: Surface Transportation Board, Case Control Unit, 1925 K Street NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by May 17, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which as of April 8, 2002, is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by May 10, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: May 6, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–11751 Filed 5–9–02; 8:45 am]

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Federal Register

Friday,
May 10, 2002

Part II

Department of Transportation

Coast Guard

33 CFR Part 155

Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[USCG–1998–3417]

RIN 2115–AF60

Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the vessel response plan salvage and marine firefighting requirements for tank vessels carrying oil. These revisions will clarify the salvage and marine firefighting services that must be identified in vessel response plans. The proposed changes will assure the appropriate salvage and marine firefighting resources are identified and available for responding to incidents up to and including the worst-case scenario. The proposed rulemaking will also set new response time requirements for each of the required salvage and marine firefighting services.

DATES: Comments and related material must reach the Docket Management Facility on or before August 8, 2002. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 9, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–1998–3417), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

You may inspect the material proposed for incorporation by reference at room 2100, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–0448. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, before July 15, 2002, call Lieutenant Douglas Lincoln, Office of Response, Response Operations Division, Coast Guard Headquarters, telephone 202–267–0448, or via e-mail at *DLincoln@comdt.uscg.mil,* and after July 15, 2002, call Lieutenant Reed Kohberger telephone 202–267–0448 or via e-mail at *RKohberger@comdt.uscg.mil.* For questions on viewing, or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1998–3417), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period. We may change this proposed rule in view of them.

Public Meeting

The Coast Guard plans to hold several public meetings. A notice with the specific dates and locations of the meetings will be published in the **Federal Register** at least 30 days prior to the meetings. In addition, known interested parties will be contacted via mail, e-mail, and telephone. If you wish to be contacted regarding the public meetings, contact Lieutenant Douglas Lincoln, listed under **FOR FURTHER INFORMATION CONTACT.**

Background and Purpose

Requirements for salvage and marine firefighting resources in vessel response plans have been in place since February 5, 1993 (58 FR 7376). The existing requirements are general. The Coast Guard did not originally develop specific requirements because salvage and marine firefighting response resource requirements were viewed as unique to each vessel. The Coast Guard's intent was to rely on the planholders to prudently identify contractor resources to meet their needs. The Coast Guard anticipated that the significant benefits of a quick and effective salvage and marine firefighting response would be sufficient incentive for industry to develop salvage and marine firefighting capabilities similar to the development of oil spill removal organizations. The existing requirements in 33 CFR 155.1050(k)(3) are general. They require that the planholder identify resources capable of being deployed to the port nearest to the area in which the vessel operates within 24 hours of notification.

Early in 1997, it became apparent that the anticipated salvage and marine firefighting capability development was not occurring. Instead, there was disagreement among planholders, salvage and marine firefighting contractors, maritime associations, public agencies, and other stakeholders as to what constituted adequate salvage and marine firefighting resources. There was also concern over whether these resources could respond to the port nearest to the vessel's operating area within 24 hours, even though industry had been given several years to develop these resources.

On June 24, 1997, a notice of meeting was published in the **Federal Register** (62 FR 34105) announcing a workshop to solicit comments from the public on potential changes to the salvage and marine firefighting requirements found in 33 CFR 155.

A public workshop was held on August 5, 1997, to address issues related to salvage and marine firefighting response capabilities, including the 24-hour response time requirement, which was then scheduled to become effective on February 18, 1998. The participants uniformly identified the following three issues that they felt the Coast Guard needed to address:

(1) Defining the salvage and marine firefighting capability that is necessary in the plans;

(2) Establishing how quickly these resources must be on-scene; and

(3) Determining what constitutes adequate salvage and marine firefighting resources.

A copy of the summary report generated from this meeting is included in the project docket.

On February 12, 1998, a notice of suspension was published in the **Federal Register** suspending the 24-hour requirement, scheduled to become effective on February 18, 1998, until February 12, 2001 (63 FR 7069). On January 17, 2001, a second notice of suspension was published in the **Federal Register**, extending the suspension of the 24-hour requirement until February 12, 2004 (66 FR 3876).

The Coast Guard examined the information provided in the National Academy of Sciences 1994 Marine Board Report: ''A Reassessment of the Marine Salvage Posture of the United States'' (1994 Marine Board Report) as part of the information collected for this rulemaking. The 1994 Marine Board Report was authored by the National Research Council's Marine Board, Committee on Marine Salvage Issues (copy available for viewing at *http://books.nap.edu/books/0309051495/html/index.html)*. This committee was established in April 1992 at the request of the U.S. Navy Supervisor of Salvage to examine issues related to jettisoning of cargo in salvage operations. At the request of the Coast Guard the committee's charter was expanded to include updating a 1982 report titled *Marine Salvage in the United States.*

The report addressed changes in the salvage industry on the East, West, and Gulf Coasts since 1982, national salvage posture issues, formulated conclusions about the salvage industry, and made specific recommendations to Congress, the U.S. Navy, and the Coast Guard on salvage issues. The information on changes in the salvage industry and national salvage posture issues was extremely valuable and many of the findings were adopted as part of this regulation.

Additionally, the Coast Guard was aware that the California Office of Spill Prevention and Response (OSPR) had an implementation date of July 1, 2000, for State Salvage Equipment and Service requirements. In May 2000, the Coast Guard contacted OSPR to discuss extending the implementation date and provided them a draft copy of this proposed rulemaking. OSPR asked the Coast Guard to submit a formal request for the implementation delay, and on June 9, 2000, the request was sent to the OSPR Administrator. On June 14, 2000, OSPR informed the Coast Guard that they were extending their implementation date to September 30, 2000. Due to the extended period required to complete the regulatory analysis for this rulemaking, the Coast Guard informed OSPR in a letter on October 25, 2000, of our delay, although there had been several discussions of the status prior to this. On November 1, 2000, the State requirements became effective. Coordination with OSPR to develop a regulation that meets both the State and Federal requirements will continue. Copies of both of these letters are available for review in the public docket.

In addition to discussions with OSPR, the Coast Guard met with members of the salvage industry, represented by the American Salvage Association, and a representative group of marine firefighters to discuss issues affecting them. A regulation concept paper was made available to participants to facilitate the discussions. Participants were made aware that the concept paper was just a model of what the regulation concept was in 1998, and that it may not accurately reflect the current composition of the draft regulation. The following issues were discussed:

- How salvors and marine firefighters will be integrated into the planholder's response plan;
- Response times for salvage and marine firefighting services;
- Training requirements for marine firefighters; and
- Issues related to the ''contract or other approved means'' definition and requirements that appears in 33 CFR 155.1020 of the current regulation.

These meetings were held at the request of the interested parties. No changes to the regulation were made based upon these meetings.

Discussion of Proposed Rule

The public workshop conducted on August 5, 1997, showed that tank vessel owners and operators wanted more specificity in the salvage and marine firefighting requirements in the vessel response plan regulations (33 CFR 155). To address this, the Coast Guard is proposing that planholders of a vessel carrying groups I through IV petroleum oil as primary cargo will need to identify, in their plans, a salvage and marine firefighting resource provider (or providers) that performs the specific salvage and marine firefighting services identified in proposed Table 155.4030(b), Salvage and Marine Firefighting Services.

The proposed tables of services provide the specificity that was previously lacking while still maintaining flexibility for each vessel. Requiring ''services'' rather than specifying types and amounts of equipment was deemed to be more practical for the planholder, since the amount and type of equipment will vary depending on the vessel's characteristics and operating environment. The services we propose requiring were derived from the 1994 Marine Board Report and from the comments received at the August 5, 1997, public workshop.

The intent of requiring planholders to identify specific resource providers for the specific services listed in proposed Table 155.4030(b), Salvage and Marine Firefighting Services, is to require that the listed service provider be contacted in the event of a marine incident requiring that service. If another service provider, not listed in the approved plan for the specific service required, is contracted for a specific response, justification for the selection of that service provider needs to be provided and approved by the Federal On Scene Coordinator (FOSC). Only under exceptional circumstances will the FOSC authorize deviation from the service provider listed in the approved plan. It is also understood that some resources such as public firefighting resources may respond because of jurisdictional requirements, although these resources may not have been listed by the planholder.

While resource providers are usually private contractors, planholders may list public marine firefighting resources in their plans under the conditions detailed in proposed § 155.4020 and § 155.4045. They may list public marine firefighters as a resource provider for firefighting services only out to the maximum extent of the public resource's jurisdiction. Typically jurisdictional boundaries extend only out to three miles, but some states have adopted greater jurisdictional boundaries. A public marine firefighting resource may agree to respond beyond their jurisdictional limits, but the Coast Guard considers it unreasonable to expect public marine firefighting resources to be used for fighting fires beyond their own jurisdictional limits.

It must be understood that because public marine firefighting services have jurisdictional boundaries, it may not be appropriate to select one public marine firefighting service to cover a whole Captain of the Port (COTP) zone. Since the Oil Pollution Act of 1990 emphasizes the use of private over public resources, public marine firefighting resource providers should only be listed when the planholder has determined no private resources are available that can meet the response times and the public resource has a responsibility to respond to incidents in the area specified in the plan. Also, the public resource must agree, in writing, to be included in the plan.

Planholders would be able to identify one or more resource providers within their plan. The 1994 Marine Board Report stated that it is unlikely any single salvage and marine firefighting contractor would be able to perform all of the elements (services) of salvage and marine firefighting in every region of the United States. Thus, more than one contractor may be necessary to perform all the services needed. The planholder would be required to list each service and the resource provider to perform it in each COTP zone the vessel transits. Planholders may list more than one resource provider for a salvage or marine firefighting service within a single COTP zone, but a primary provider must be identified. Different primary resource providers can be listed for the same service in different COTP zones.

Planholders must have discussions with resource providers to ensure that proper resources are identified for their type of vessel and cargo. For example, extinguishing agents must be identified that are compatible with the cargo onboard the vessel. Planholders would be allowed to include portable and non-portable off-vessel firefighting systems (or both) in their plans, so long as these resources are capable of responding within the time frames listed in this proposed rulemaking. Planholders would only list in their plan resource providers who have provided written consent to be included. This consent would include a statement from the resource provider that they are capable of providing the salvage and/or marine firefighting services they have been requested to provide within the response times in proposed Table 155.4030(b), Salvage and Marine Firefighting Services. Additionally, the proposed regulations would require that plans be certified by the planholder and state that the resource provider(s) capabilities have been reviewed by the planholder, and the minimum selection criteria in proposed § 155.4050 were considered during selection of the resource provider(s).

Only marine firefighting contractors that meet the National Fire Protection Association (NFPA) Standards 1001, 1021, 1405, and 1561, or show equivalent training, or qualification through experience, should be included in the plan. The Coast Guard proposes to incorporate these standards by reference into the rulemaking.

The public workshop showed a need to identify practical on-scene response times for salvage and marine firefighting services. This proposed rulemaking would set specific response times (in hours) for each of the salvage and marine firefighting services that must be included in plans.

Resource providers, in their written agreement with the planholder, must provide a statement that they are able to meet the required response times for each service they would provide. This agreement need not be provided as part of the plan, but must be available for inspection upon request by the Coast Guard. The time frame starts when someone in the planholders response organization receives notification of a potential or actual incident. It ends when the end point requirement listed in proposed Table 155.4040(c), Response Time End Points is met. The measurement of the 12 and 50 mile point will be from the boundary lines or the line of demarcation (COLREG lines) for the Gulf of Mexico for CONUS operations, and from the harbor of the COTP city closest to the potential or actual discharge for OCONUS operations.

Planholders would be responsible for ensuring that contract negotiations with salvage and/or marine firefighting providers do not delay response efforts. In order to ensure this, the Coast Guard is proposing to require, as part of the ''contract or other approved means'' in § 155.4025, that planholders develop and sign a written funding agreement between themselves and the resource providers. The funding agreement should contain an agreed upon pricing list for services and equipment that the resource providers might need to provide in order to meet the requirements. This agreement should state how long the agreement remains in effect and must be available to the Coast Guard upon request. If Lloyd's Standard Form of Salvage Agreement is to be used, this should be stated in place of a pricing list for services.

The public workshop also showed a need to identify qualified salvage and marine firefighting resource providers. In the absence of national and/or international certification or qualification programs for determining the adequacy of private salvage and marine firefighting resources, planholders will be responsible for determining the adequacy of these resources on their own. The 1994 Marine Board Report, on page 35, made recommendations as to the minimum attributes that a salvor should possess in order to be considered a professional. These attributes and others have been compiled into a comprehensive list that the Coast Guard feels planholders need to consider when choosing resource providers.

In proposed § 155.4050, we recommend that a planholder choose resource providers who meet the following criteria:

(1) Are currently performing the needed response service(s).

(2) Have a documented history of participation in successful salvage and/or marine firefighting operations, including salvage and/or marine firefighting equipment deployment.

(3) Own or have contracts for equipment needed to perform response services.

(4) Have personnel with documented training certification and degree experience (Naval Architecture, Fire Science, etc.).

(5) Have 24-hour availability of personnel and equipment, and a history of response times compatible with the time requirements in this rulemaking.

(6) Have an on-going continuous training program, and meet the training guidelines in NFPA 1001, 1021, 1405, and 1561, or equivalent.

(7) Have a successful record of participation in drills and exercises.

(8) Have sample salvage or marine firefighting plans used and approved during real incidents.

(9) Have membership in relevant national and/or international organizations.

(10) Have insurance that covers the salvage and/or marine firefighting services which they intend to provide.

(11) Have sufficient up front capital to support an operation.

(12) Have equipment and experience to work in the specific regional geographic environment(s) that the vessel operates in (e.g., bottom type, water turbidity, water depth, currents, temperature extremes, etc.).

(13) Have the logistical and transportation support capability required to sustain operations for extended periods of time.

A resource provider need not meet all of the selection criteria in order to be considered, in fact some criteria will not apply to all resource providers.

Planholders would be required to certify that these factors were considered when choosing a resource provider. This includes determining that some of the selection criteria do not apply.

Planholders who are unable to obtain a salvage and/or marine firefighting resource provider(s) that can meet the specified response times may submit a request for a temporary waiver. The details of the waiver process and the waiver time limits are listed in proposed § 155.4055. The waiver request must specifically identify the salvage or marine firefighting service, response time, COTP zone, and operating environment (e.g., inland, nearshore, offshore, OCONUS). The waiver request must first be submitted to the cognizant COTP. The COTP will evaluate and comment on the waiver request, and then forward the waiver request, via the District and Area Commanders, on to Commandant (G–MOR). Commandant (G–MOR) shall make the final determination on approving the waiver. The emergency lightering requirements that are detailed in this rulemaking are not subject to waiver. Planholders are already required to comply with these requirements, as in 33 CFR 155.1050(l).

During the development of the regulation, the Coast Guard decided that group V petroleum products would not be covered under this rulemaking. This decision was based on the differences in response procedures for dealing with group V petroleum cargoes and the relative differences in cargo volumes transported. For group V petroleum products, the existing planning requirements in 33 CFR 155.1052(f) will remain the same. In other words, these proposed regulations will not apply to group V petroleum products. The suspension in 33 CFR 155.1052(f) will be cancelled once these proposed salvage and marine firefighting requirements become final.

Incorporation by Reference

Material proposed for incorporation by reference appears in §§ 155.4035 and 155.4050. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES.** Copies of the material are available from the sources listed in § 155.140.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation and Unfunded Mandates Reform Act Assessment

Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

The legal authority for this proposed rulemaking is provided by the Oil Pollution Act of 1990 (OPA 90). Response plans are required by the Federal Water Pollution Control Act 33 USC 1321(j)(5) as amended by Section 4202(a) of OPA 90.

The proposed rule will not result in expenditures by State, local, or tribal governments because public vessels are exempt from the requirements of this rulemaking. This rule is expected to cost the private sector more than $100 million in the first year the rule is in effect as salvage and firefighting companies invest in capital equipment. The Regulatory Evaluation below provides an overview of the rulemaking and the costs and benefits of this rulemaking. A more detailed discussion of costs and benefits can be found in the Regulatory Assessment for the proposed rule, which is available in the docket as indicated under **ADDRESSES.** The Regulatory Assessment also presents alternatives to the proposed rule, which are contained in the Initial Regulatory Flexibility Act Analysis.

Regulatory Evaluation

This proposed rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget. Section 6(a)(3) of Executive Order 12866 states that an assessment of potential costs and benefits must be conducted. This evaluation is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A more detailed draft Regulatory Assessment is available in the docket as indicated under **ADDRESSES.**

Summary of Cost

This rule is economically significant because the costs for the first year the rule is in effect exceed $100 million. Costs are presented in 2001 dollars, and the analysis covers the period 2001–2030. These costs are considered accurate for 2002. Detail of these costs is described below.

The total net present value (NPV) cost for the period 2001–2030 is $491.7 million (7 percent discount rate, 2001 dollars). Of this, $127.9 million ($111.7 million NPV) is for the initial acquisition of salvage and firefighting equipment in 2003, when the proposed rule will become effective. An estimated $28.4 million ($24.8 million NPV) is for initial paperwork requirements in 2003 for salvage and firefighting companies, vessel planholders, and companies that prepare response plans for planholders. This rule is estimated to cost $30.9 million annually (undiscounted) for operations, maintenance, and paperwork costs. This cost will first be incurred in 2004 and will be incurred through the assessment period (until 2030). Capital equipment initially acquired in 2003 will be replaced at various times throughout the assessment period.

We believe that the capital and annual costs incurred by salvage and firefighting companies will be, to the extent possible, passed on to vessel planholders through retainer fees or increased costs for services provided.

A summary of the estimated cost for the proposed rule is presented in Table 1.

TABLE 1.—TOTAL NET PRESENT VALUE COST OF THE PROPOSED RULE

[2001 $Millions, 7 Percent Discount Rate, Assessment Period 2001–2030]

Affected Entity	Equipment	Personnel	Paperwork	Total
Salvage Companies	$349.8	$38.7	$0.6	$389.1
Firefighting Companies	21.3	39.9	16.6	77.8
Planholders/Plan Preparers	0	0	24.4	24.4
Coast Guard	0	0	0.4	0.4
Total	371.1	78.6	42.0	491.7

Equipment and personnel costs were developed using information from representatives of the salvage and marine firefighting industry, other experts, and the Coast Guard. Paperwork costs were based on previous regulatory analysis of paperwork requirements for the original vessel response plan rulemaking for salvage and marine firefighting and the hazardous substance response plan rulemakings.

Summary of Benefit

Benefit of the proposed rule is expressed in barrels of oil not spilled. We assessed the benefit of the proposed rule using a modeling tool developed for the Oil Pollution Act of 1990 Programmatic Regulatory Assessment (OPA 90 PRA). The PRA assessed the costs and benefits of 11 ''core group'' rules enacted under OPA 90. These included such rules as double hulls, financial responsibility, and the original vessel response plan rulemakings. The PRA assessed the overlapping effects (and therefore benefits) of these 11 major rulemakings and avoided the double counting of barrels of oil not spilled. A copy of the OPA 90 PRA can be found in the docket for this proposed rulemaking.

The benefit analysis for the proposed rulemaking used the PRA modeling tool and adjusted estimates of effectiveness specific to this proposed rulemaking. Effectiveness factors (i.e., the quantified effect of the proposed rule) were developed through an expert panel. We assume benefits will be accrued beginning in 2004 after equipment has been purchased and response plans have been developed. The number of barrels of oil not spilled over the assessment period (2001–2030) as a result of this rulemaking is 87,282 NPV (7 percent discount rate), or approximately 87,300 NPV barrels.

The cost effectiveness of the rule is the NPV cost of the rule (in dollars) divided by the NPV of the oil not spilled (in barrels) as a result of the rule. The cost effectiveness of the proposed salvage and firefighting rulemaking is $5,634 ($491.7 million/87,282 barrels), or approximately $5,600/barrel. This means it costs society $5,600 to keep each barrel of oil from being spilled into the water.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000.

From our analysis, the Coast Guard concluded that the requirements for salvage and marine firefighting might have a significant impact on a substantial number of small entities. There are an estimated 710 vessel companies that will be affected by the proposed rule. Of these, an estimated 191 of them are small businesses. We estimate that the proposed rule will have a no more than 10-percent affect on annual revenues for 90 percent of these 191 small businesses. Under the proposed rulemaking, some businesses may be eligible for a limited time waiver of the salvage and marine firefighting requirements. This waiver may help offset the financial impacts of the proposed rulemaking on affected small businesses.

A complete Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket where indicated under **ADDRESSES.** This analysis also presents alternatives to the proposed rule that the Coast Guard considered.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would effect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Douglas Lincoln at 202–267–0448.

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, record keeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This proposed rule affects an existing OMB approved collection of information.

Title: Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Response Equipment Requirements for Prince William Sound.

OMB Number: 2115–0595.

Summary of the Collection of Information: Vessels carrying oil in bulk as cargo, and operating in U.S. waters are required by section 4202(a)(6) of the Oil Pollution Act of 1990, and amended section 311(j) of the Federal Water Pollution Control Act to prepare and submit a written response plan for a worst case discharge of oil. The information in these plans contain:

- Names and contact information for salvage and marine firefighting responders for each vessel with appropriate equipment and resources located in each zone in which the vessel operates.
- Specific lists of equipment that the resource providers will make available in case of an incident in each zone.
- Certification that the responders are qualified and have given their permission to be included in the plan.

The collection of information period is 2003–2005 (3 years). We use this period rather than 2001–2003 because collection of information requirements under this rulemaking are anticipated to begin in 2003.

Need for Information: The collection of information is necessary to ensure that salvage and marine firefighting resources appropriate for each vessel and type of cargo are available if an incident occurs to prevent or mitigate the discharge of oil into the environment.

Proposed Use of Information: The information in the salvage and marine firefighting sections of vessel response plans is necessary to show evidence that vessel planholders have done proper planning to prevent or mitigate oil outflow from vessel casualties, and to provide that information to the Coast Guard for their use in emergency response.

Description of the Respondents: Respondents are vessel owners and operators, known as planholders. Planholders also include small entities, such as tank barge companies, and tank ship or mixed fleet companies. Respondents are also the companies that may prepare response plans for planholders. Finally, respondents are the salvage and firefighting companies that will provide the equipment requirements under the proposed rule.

Number of Respondents: The proposed rule affects 710 of the 5,127

respondents who are planholders and plan preparers to the collection of information. The proposed rule also affects 50 salvage and firefighting companies. In the first year the rule is in effect (estimated in 2003), there will be 710 + 50 = 760 respondents. In the 2nd and 3rd years of the 3-year collection of information period (2004–2005), there will be 710 respondents (planholders/plan preparers only).

Frequency of Response: The proposed rule accounts for 710 of the 5,207 total annual responses for the collection of information. In addition, there are 50 responses from salvage and firefighting companies. In the first year the rule is in effect (estimated in 2003), there will be 710 + 50 = 760 responses (one response for each respondent). In the 2nd and 3rd years of the 3-year collection of information period (2004–2005), there will be 710 responses (one for each planholder/plan preparer).

Burden of Response: The primary burden of response consists of:

- Initial preparation of the vessel response plan.
- Consultation and negotiation between salvage and firefighting companies and planholders/plan preparers.
- Submission of the plan to the Coast Guard for approval.
- Submission of revisions or modifications to a response plan as material changes occurs for the vessel to prepare.
- Resubmission of the vessel response plan to the Coast Guard.

The plans are to be resubmitted every 5 years, and the paperwork burden for the resubmission is expected to be the same as for the annual review.

Estimate of Total Annual Burden: The total estimated burden for planholders and plan preparers to comply with the proposed rulemaking is 100,520 hours for the first year (2003), and 17,750 hours for each subsequent year (2004–2005). Total estimated burden for salvage and firefighting companies is 196,840 hours for the first year and 0 hours for each subsequent year. The total burden for the first year the rule is in effect is 297,360 hours. The total burden for subsequent years is 17,750. The total burden of the proposed rule during the 3-year period of the collection of information (2003–2005) is 297,360 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the dates under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, or 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as casualty reporting and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).)

This regulation covers vessel response plans for salvage and marine firefighting resources, aimed at reducing cargo loss should a marine casualty occur. As discussed in the Background and Purpose section above, the Coast Guard has consulted with state agencies, such as California's OSPR, to ensure these proposed regulations will not interfere with or preempt state regulations on the same subject. We will continue to do so, until a Final Rule is published.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Consultation and Coordination With Indian Tribal Governments

This proposed rule will not have tribal implications; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. If tribal implications are identified during the comment period we will undertake appropriate consultations With the affected Indian tribal officials.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this might be classified as a ''significant energy action'' under that order because it is a ''significant regulatory action'' under Executive Order 12866 and might have a significant adverse effect on the supply, distribution, or use of energy. The Coast Guard is establishing a waiver provision for this proposed rule, and we do not anticipate adverse energy consequences during that time. After this waiver period, we do not expect a national impact on energy supply, distribution or use. We cannot rule out however, effects on local markets. We would appreciate comments discussing any likely significant adverse effects on the supply, distribution, or use of energy. Submit these comments to one of the locations listed under **ADDRESSES.** We will analyze all comments and, if necessary, prepare a full Statement of Energy Effects with the Final Rule for this project.

Environment

The Coast Guard considered the environmental impact of vessel response plans as a whole during an April 1992, Environmental Assessment (EA), and a November 1992 Supplemental Statement, and concluded that a Finding of No Significant Impact (FONSI) was appropriate. The 1992 EA and FONSI are sufficiently broad in scope to cover these new requirements. Therefore, we have determined that it is not necessary to complete another EA solely for these salvage and marine firefighting revisions. The 1992 EA and FONSI are available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46, 1.46(iii).

Sections 155.110–155–130, 155.110–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

Note: Additional requirements for vessels carrying oil or hazardous materials appears in 46 CFR parts 30 through 36, 150, 151, and 153.

2. Add a note following § 155.130 to read as follows:

§ 155.130 Exemptions.

* * * * *

Note to § 155.130: Additional exemptions/temporary waivers related to salvage and marine firefighting requirements can be found in § 155.4055.

3. Amend § 155.140 by adding alphabetically to paragraph (b):

§ 155.140 Incorporation by reference.

* * * * *

(b) * * *

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269–9101

NFPA 1001, Standard for Fire Fighter Professional Qualifications, 1997 Edition—155.4050

NFPA 1021, Standard for Fire Officer Professional Qualifications, 1999 Edition—155.4050

NFPA 1405, Guide for Land-based Fire Fighters who Respond to Marine Vessel Fires, 1996 Edition 155.4035; 155.4050

NFPA 1561, Standard on Fire Department Incident Management System, 2000 Edition 155.4050

* * * * *

4. In § 155.1020, revise the definition of ''Oil Spill Removal Organization'' to read as follows:

§ 155.1020 Definitions.

* * * * *

Oil spill removal organization (OSRO) means an entity that provides oil spill response resources.

* * * * *

5. Amend § 155.1050 by revising paragraph (k) to read as follows:

§ 155.1050 Response plan development and evaluation criteria for vessels carrying groups I through IV petroleum oil as a primary cargo.

* * * * *

(k) *Salvage* (including lightering) and *marine firefighting* requirements are found in subpart I of this part.

* * * * *

6. Add subpart I, consisting of § 155.4010 through § 155.4055, to read as follows:

Subpart I—Salvage and Marine Firefighting

Sec.

§ 155.4010 What is the purpose of this subpart?

The purpose of this subpart is to establish vessel response plan *salvage* and *marine firefighting* requirements for vessels that are required by § 155.1015 to have a response plan. *Salvage* and *marine firefighting* actions can save lives, property, and prevent the escalation of potential oil spills to worst case events.

§ 155.4015 Who must follow this subpart?

You must follow this subpart if your vessel meets the vessel response plan applicability requirements of § 155.1015.

§ 155.4020 When must my plan comply with this subpart?

(a) If you have an existing approved vessel response plan, you must have your plan updated and submitted to the Coast Guard by [Date Six Months After Publication of a Final Regulation].

(b) All new or existing vessels entering United States that meet the applicability requirements of § 155.1015, that do not have an approved vessel response plan, must comply with § 155.1065.

(c) Your vessel may not conduct oil operations if-(1) You have not submitted a plan to the Coast Guard in accordance with § 155.1065 prior to [Date Six Months After Publication of a Final Regulation];

(2) The Coast Guard determines that the response resources referenced in your plan do not meet the requirements of this subpart;

(3) The contracts or agreements cited in your plan have lapsed or are otherwise no longer valid;

(4) You are not operating in accordance with your plan; or

(5) The plan's approval has expired.

§ 155.4025 Definitions.

Assessment of structural stability means completion of a vessel's stability and structural integrity assessment through the use of a salvage software program. The data used for the calculations would include information collected by the on-scene salvage professional. The assessment is intended to allow sound decisions to be made for subsequent salvage efforts.

Continental United States (CONUS) means the contiguous 48 states and the District of Columbia.

Contract or other approved means is any one of the following:

(1) A written contractual agreement between a vessel owner or operator and a resource provider. This agreement must expressly provide that the resource provider is capable of, and intends to commit to, meeting the plan requirements.

(2) A written certification that the personnel, equipment, and capabilities required by this subpart are available and under your direct control.

(3) An alternative approved by the Coast Guard (Commandant (G-MOR)).

As part of the contract or other approved means you must develop and sign, with your resource provider, a written funding agreement. This funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations. The funding agreement must include a statement of how long the agreement remains in effect, and must be available to the Coast Guard for inspection.

Diving services support means divers and their equipment to support salvage operations. This support may include, but not be limited to, underwater repairs, welding, placing lifting slings, or performing damage assessments.

Emergency lightering is the process of transferring oil between two ships or other floating or land-based receptacles in an emergency situation and may require pumping equipment, transfer hoses, fenders, portable barges, shore based portable tanks, or other equipment that circumstances may dictate.

Emergency towing, also referred to as rescue towing, means the use of towing vessels that can pull, push or make-up alongside a vessel. This is to ensure that a vessel can be stabilized, controlled or removed from a grounded position. Towing vessels must have the proper horsepower or bollard pull compatible with the size and tonnage of the vessel to be towed.

External emergency transfer operations means the use of external pumping equipment placed onboard a vessel to move oil from one tank to another, when the vessel's own transfer equipment is not working.

External firefighting teams means trained firefighting personnel, aside from the crew, with the capability of boarding and combating a fire on a vessel.

External vessel firefighting systems mean firefighting resources (personnel and equipment) that are capable of combating a fire from other than onboard the vessel. These resources include, but are not limited to, fire tugs, portable fire pumps, airplanes, helicopters, or shore side fire trucks.

Funding agreement is a written agreement between a resource provider and a planholder that identifies agreed upon rates for specific equipment and services to be made available by the resource provider under the agreement. The funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations. This agreement must be part of the contract or other approved means, however, it does not need to be part of your plan.

Great Lakes means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

Heavy lift means the use of a salvage crane, A-frames, hydraulic jacks, winches, or other equipment for lifting, righting, or stabilizing a vessel.

Inland area means the area shoreward of the boundary lines defined in 46 CFR part 7, except that in the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines) as defined in §§ 80.740 through 80.850 of this chapter. The inland area does not include the Great Lakes.

Making temporary repairs means action to temporarily repair a vessel to enable it to safely move to a shipyard or other location for permanent repairs. These services include, but are not limited to, shoring, patching, drill stopping, or structural reinforcement.

Marine firefighting means any firefighting related act undertaken to assist a vessel in potential or actual fire danger, to prevent loss of life, damage or destruction of the vessel, or damage to the marine environment.

Nearshore area means the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, a nearshore area is one extending seaward 12 miles from the line of demarcation (COLREG lines) as defined in §§ 80.740 through 80.850 of this chapter.

Offshore area means the area up to 38 nautical miles seaward of the outer boundary of the nearshore area.

On-site fire assessment means that a marine firefighting professional is on scene, at a safe distance from the vessel or on the vessel, that can determine the steps needed to control and extinguish a marine fire, taking into consideration a vessel's stability and structural integrity.

On-site salvage assessment means that a salvage professional is on scene, at a safe distance from the vessel or on the vessel, that has the ability to assess the vessel's stability and structural integrity. The data collected during this assessment will be used in the salvage software calculations and to determine necessary steps to salve the vessel.

Other refloating methods means those techniques for refloating a vessel aside from using pumps. These services include, but are not limited to, the use of pontoons, air bags or compressed air.

Outside Continental United States (OCONUS) means Alaska, Hawaii, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States.

Remote assessment and consultation means contacting the salvage and/or marine firefighting resource providers by phone or other communications to discuss and assess the situation.

Resource provider means an entity that provides personnel, equipment, supplies, and other capabilities necessary to perform salvage and/or marine firefighting services identified in the response plan. For marine firefighting services, resource providers can include public firefighting resources as long as they are able and willing to provide the services needed.

Salvage means any act undertaken to assist a vessel in potential or actual danger, to prevent loss of life, damage or destruction of the vessel and release of its contents into the marine environment.

Salvage plan means a plan developed to guide salvage operations except those identified as specialized salvage operations.

Special salvage operations plan means a salvage plan developed to carry out a specialized salvage operation, including heavy lift and/or subsurface product removal.

Subsurface product removal means the safe removal of oil from a vessel that has sunk or is partially submerged underwater. These actions can include pumping or other means to transfer the oil to a storage device.

Underwater vessel and bottom survey means having salvage resources on scene that can perform examination and analysis of the vessel's hull and equipment below the water surface. These resources also include the ability to determine the bottom configuration and type for the body of water. This service can be accomplished through the use of equipment such as sonar, magnetometers, remotely operated vehicles or divers. When divers are used to perform these services, the time requirements for this service apply and not those of diving services support.

§ 155.4030 What salvage and marine firefighting services are required to be listed in my plans?

(a) You must identify in your plan the *salvage* and *marine firefighting* services listed in Table 155.4030(b)—Salvage and Marine Firefighting Services. Additionally, you must list those *resource providers* that you have contracted to provide these services. You may list multiple *resource providers* for each service, but you must identify which one is your primary *resource provider* for each Captain of

the Port (COTP) zone in which you operate. A method of contact, consistent with the requirements in §§ 155.1035(e)(6)(ii) and 155.1040(e)(5)(ii), must also be listed adjacent to the name of the resource provider.

(b) TABLE 155.4030(b).—SALVAGE AND MARINE FIREFIGHTING SERVICES

Service	Location of incident response activity timeframe	
(1) Salvage	CONUS: near-shore area; inland waters; Great Lakes; and OCONUS: < or = 12 miles from COTP city (hours)	CONUS: offshore area; and OCONUS: < or = 50 miles from COTP city (hours)
(i) *Assessment & Survey:*		
(A) Remote assessment and consultation	1	1
(B) Begin assessment of structural stability	3	3
(C) On-site salvage assessment	6	12
(D) Assessment of structural stability	12	18
(E) Hull and bottom survey	12	18
(ii) *Stabilization:*		
(A) Emergency towing	12	18
(B) Salvage plan	16	22
(C) External emergency transfer operations	18	24
(D) Emergency lightering	18	24
(E) Other refloating methods	18	24
(F) Making temporary repairs	18	24
(G) Diving services support	18	24
(iii) *Specialized Salvage Operations:*		
(A) Special salvage operations plan	18	24
(B) Heavy lift	72	84
(C) Subsurface product removal	72	84

(2) Marine firefighting	At pier (hours)	CONUS: Near-shore area; inland waters; great lakes; and OCONUS: < or = 12 miles from COTP city (hours)	CONUS: Offshore area; and OCONUS: < or = 50 miles from COTP city (hours)
(i) *Assessment & Planning:*			
(A) Remote assessment and consultation	1	1	1
(B) On-site fire assessment	2	6	12
(ii) *Fire Suppression:*			
(A) External firefighting teams	4	8	12
(B) External vessel firefighting systems	4	12	18

(c) *Integration into the response organization.* You must ensure that all *salvage* and *marine firefighting resource providers* are integrated into the response organizations listed in your plans. The response organization must be consistent with the requirements set forth in §§ 155.1030(d), 155.1040(d), and 155.1045(d).

(d) *Coordination with other response resource providers, response organizations and OSROs.* Your plan must include provisions on how the *salvage* and *marine firefighting resource providers* will coordinate with other response resources, response organizations, and OSROs. For example, you will need to identify how *salvage* and *marine firefighting* assessment personnel will coordinate response activity with oil spill removal organizations. For services that, by law, require public assistance, there must be clear guidelines on how service providers will interact with those organizations.

(e) *Ensuring the proper emergency towing vessels are listed in your plans.* Your plans must identify towing vessels with the proper characteristics, horsepower, and bollard pull to tow your vessel(s). These towing vessels must be capable of operating in environments where the winds are up to 40 knots.

(f) *Ensuring the proper type and amount of transfer equipment is listed in your plans.* Your *salvage resource provider* must be able to bring on scene a pumping capability that can offload the vessel's largest cargo tank in 24 hours of continuous operation. This is required for both emergency transfer and lightering operations.

(g) *Ensuring firefighting equipment is compatible with your vessel.* Your plan must list the proper type and amount of extinguishing agent needed to combat a fire involving your vessel's cargo, other contents, and superstructure. If your primary extinguishing agent is foam or water, you must identify resources in your plan that are able to pump, at a minimum, 0.16 gallons per minute per square foot of the deck area of your vessel, or an appropriate rate for spaces that this rate is not suitable for and if needed, an adequate source of foam.

(h) *Ensuring the proper subsurface product removal.* You must have *subsurface product removal* capability if your vessel(s) operates in waters of 40 feet or more. Your resource provider

must have the capability of removing cargo and fuel from your sunken vessel to a depth equal to the maximum your vessel operates in up to 150 feet.

(i) *Worker health and safety.* Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing *salvage* and *marine firefighting* services.

§ 155.4035 What pre-incident information and arrangements are needed for the salvage and marine firefighting resource providers in my plans?

(a) You must provide the information listed in §§ 155.1035(c), 155.1040(c), and 155.1045(c) to your *salvage* and *marine firefighting* resource providers.

(b) *Marine firefighting pre-fire plan.*

(1) You must prepare a vessel pre-fire plan in accordance with the National Fire Protection Association (NFPA) Standard 1405, Guide for Land-based Firefighters who Respond to Marine Vessel Fires, Chapter 7. If you meet this requirement through compliance with another regulation or international standard, you need only to indicate this in your plan.

(2) The *marine firefighting resource provider(s)* you are required to identify in your plan must be given a copy of the plan. Additionally, they must certify in writing to you that they find the plan acceptable and agree to implement it to mitigate a potential or actual fire.

§ 155.4040 What are the response times for each salvage and marine firefighting service?

(a) You must ensure, by *contract or other approved means,* that your *resource provider(s)* is capable of providing the services within the required time frames.

(1) If your vessel is at the pier or transiting a COTP zone within the Continental United States (CONUS), the time frames in Table 155.4030(b) apply as listed.

(2) If your vessel is at the pier or transiting a COTP zone outside the Continental United States (OCONUS), the time frames in Table 155.4030(b) apply as follows:

(i) Inland waters and nearshore area time frames apply from the COTP city out to and including the 12 mile point.

(ii) Offshore area time frames apply from 12 to 50 miles outside the COTP city.

(3) If your vessel transits within an OCONUS COTP zone that is outside the areas described in paragraph (a)(2) of this section, but within the inland waters or the nearshore or offshore area, you must submit in writing, in your plan, the steps you will take to address *salvage* and *marine firefighting* needs in the event these services are required.

(b) The time frame starts when anyone in your response organization receives notification of a potential or actual incident. It ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 or 50-mile point from the COTP city, or a point identified in your response plan for areas OCONUS. Table 155.4040(c) provides additional amplifying information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city.

(c) Table 155.4040(c)—Response Time End Points (CONUS & Within 50 Miles of An OCONUS COTP City)

Service	Response time ends when
(1) Salvage:	
(i) Remote assessment and consultation	Salvor is in voice contact with QI/Master/Operator.
(ii) Begin assessment of structural stability	A structural assessment of the vessel has been initiated.
(iii) On-site salvage assessment	Salvor onboard vessel.
(iv) Assessment of structural stability	Initial analysis is completed. This is a continual process, but at the time specified an analysis needs to be completed.
(v) Hull and bottom survey	Survey completed.
(vi) Emergency towing	Towing vessel on scene.
(vii) Salvage plan	Plan completed and submitted to Incident Commander/Unified Command.
(viii) External emergency transfer operations	External pumps onboard vessel.
(ix) Emergency lightering	Lightering equipment on scene and alongside.
(x) Other refloating methods	Salvage plan approved & resources on vessel.
(xi) Making temporary repairs	Repair equipment onboard vessel.
(xii) Diving services support	Required support equipment & personnel on scene.
(xiii) Special salvage operations plan	Plan completed and submitted to Incident Commander/Unified Command.
(xiv) Heavy lift	Resources on scene.
(xv) Subsurface product removal	Resources on scene.
(2) Marine Firefighting:	
(i) Remote assessment and consultation	Firefighter in voice contact with QI/Master/Operator.
(ii) On-site fire assessment	Firefighter representative on site.
(iii) External firefighting teams	Team and equipment on scene.
(iv) External vessel firefighting systems	Personnel and equipment on scene.

(d) *How to apply the time frames to your particular situation.* To apply the time frames to your vessel's situation, follow these procedures:

(1) Identify if your vessel operates CONUS or OCONUS.

(2) If your vessel is calling at any CONUS pier or an OCONUS pier within 50 miles of a COTP city, you must list the pier location by facility name or city and ensure that the firefighting *resource provider* can reach the location within the specified response times in the table in § 155.4030(b).

(3) If your vessel is transiting within CONUS inland waters, nearshore or offshore areas or the Great Lakes, you must ensure the listed *salvage* and *marine firefighting* services are capable of reaching your vessel within the appropriate response times listed in the table in § 155.4030(b).

(4) If your vessel is transiting within 12 miles or less from an OCONUS COTP city, you must ensure the listed *salvage* and *marine firefighting* services are capable of reaching a point 12 miles from the harbor of the COTP city within the nearshore area response times listed in the table in § 155.4030(b).

(5) If your vessel is transiting between 12 and 50 miles from an OCONUS COTP city, you must ensure the listed

salvage and *marine firefighting* services are capable of reaching a point 50 miles from the harbor of the COTP city within the offshore area response times listed in the table in § 155.4030(b).

(6) If your vessel transits inland waters or the nearshore or offshore areas OCONUS, but is more than 50 miles from a COTP city, you must still contract for *salvage* and *marine firefighting* services and provide a description of how you intend to respond and an estimated response time when these services are required, however, none of the time limits listed in the table in § 155.4030(b) will apply to these services.

§ 155.4045 What arrangements or contracts must I have with the salvage and marine firefighting resource providers?

(a) You may only list resource providers in your plan that have been arranged by *contract or other approved means.*

(b) You must obtain written consent from the *resource provider* stating that they agree to be listed in your plan. This consent must state that the *resource provider* agrees to provide the services that are listed in §§ 155.4030(a) through 155.4030(g), and that these services are capable of arriving within the response times listed in the table in § 155.4030(b). This consent may be included in the contract with the *resource provider* or in a separate document.

(c) This written consent must be available to the Coast Guard for inspection. The response plan must identify the location of this written consent, which must be—

(1) On board the vessel; or

(2) With a planholder representative located in the United States.

(d) Public marine firefighters may only be listed out to the maximum extent of the public resource's jurisdiction, unless other agreements are in place. A public marine firefighting resource may agree to respond beyond their jurisdictional limits, but the Coast Guard considers it unreasonable to expect public marine firefighting resources to do this.

§ 155.4050 How can I ensure that the salvors and marine firefighters are adequate?

(a) You are responsible for determining the adequacy of the *resource provider*s you intend to include in your plan.

(b) When determining adequacy of the resource provider, you must consider as a minimum the following selection criteria:

(1) *Resource provider* is currently working in response service needed.

(2) *Resource provider* has documented history of participation in successful *salvage* and/or *marine firefighting* operations, including equipment deployment.

(3) *Resource provider* owns or has contracts for equipment needed to perform response services.

(4) *Resource provider* has personnel with documented training certification and degree experience (Naval Architecture, Fire Science, etc.).

(5) *Resource provider* has 24-hour availability of personnel and equipment, and history of response times compatible with the time requirements in the regulation.

(6) *Resource provider* has on-going continuous training program. For *marine firefighting* providers, they must meet the training guidelines in NFPA Standards 1001, 1021, 1405, and 1561, or show equivalent training, or qualification through experience.

(7) *Resource provider* has successful record of participation in drills and exercises.

(8) *Resource provider* has *salvage* or *marine firefighting* plans used and approved during real incidents.

(9) *Resource provider* has membership in relevant national and/or international organizations.

(10) *Resource provider* has insurance that covers the *salvage* and/or *marine firefighting* services which they intend to provided.

(11) *Resource provider* has sufficient up front capital to support an operation.

(12) *Resource provider* has equipment and experience to work in the specific regional geographic environment(s) that the vessel operates in (e.g., bottom type, water turbidity, water depth, and temperature extremes).

(13) *Resource provider* has the logistical and transportation support capability required to sustain operations for extended periods of time.

(c) A *resource provider* need not meet all of the selection criteria in order for you to choose them as a provider.

(d) You must certify in your plan that these factors were considered when you chose your *resource provider*.

§ 155.4055 What if I am unable to obtain a salvage and/or marine firefighting resource provider that can meet one or more of the specified response times?

(a) You may submit a request for a temporary waiver of a specific response time requirement, if you are unable to identify a resource provider who can meet the response time.

(b) Your request must be specific as to the COTP zone, operating environment, *salvage* or *marine firefighting* service, and response time.

(c) Emergency lightering requirements set forth in § 155.4030(b) will not be subject to the waiver provisions of this subpart.

(d) You must submit your request to the Commandant (G-MOR) via the local COTP for final approval. The local COTP will evaluate and comment on the waiver before forwarding the waiver request, via the District and Area Commanders, to the Commandant (G-MOR) for final approval.

(e) Your request must include the reason why you are unable to meet the time requirements. It must also include how you intend to correct the shortfall, the time it will take to do so, and what arrangements have been made to provide the required response resources and their estimated response times.

(f) The Commandant will only approve waiver requests up to a specified time period, depending on the service addressed in the waiver request, the operating environment, and other relevant factors. These time periods are listed in the table in § 155.4055(g).

(g) Table 155.4055(g)—Service Waiver Time Periods.

Service	Maximum waiver time period (years)
(1) Remote salvage assessment & consultation	0
(2) Remote firefighting assessment & consultation	0
(3) On-site salvage & firefighting assessment	1
(4) Hull and bottom survey	2
(5) Salvage stabilization services	3
(6) Fire suppression services	4
(7) Specialized salvage operations	5

(h) You must submit your waiver request 30 days prior to any plan submission deadlines identified in this or any other subpart of part 155 in order for your vessel to continue oil operations.

Dated: May 1, 2002.

James M. Loy,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 02–11376 Filed 5–8–02; 8:45 am]

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Part III

Department of the Treasury

Fiscal Service

31 CFR Part 205

Rules and Procedures for Efficient Federal-State Funds Transfers; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 205

RIN 1510–AA38

Rules and Procedures for Efficient Federal-State Funds Transfers

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: On October 12, 2000, the Financial Management Service issued a Notice of Proposed Rulemaking proposing revisions to the regulations implementing the Cash Management Improvement Act of 1990, as amended (CMIA). These regulations govern the transfer of funds between the Federal government and States for certain Federal assistance programs. This final rule finalizes the proposed rule, with changes, and addresses issues raised by comments received in response to the Notice of Proposed Rulemaking. The purpose of this final rule is to update the current regulations and address various concerns raised since the initial issuance of the regulations. This rule is intended to improve the efficiency of Federal-State funds transfers.

EFFECTIVE DATE: June 24, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen K. Kenneally, Financial Program Specialist, at (202) 874–6966, or Ellen Neubauer, Senior Attorney, at (202) 874–6680. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays. A copy of this final rule is being made available on the Financial Management Service web site at the following address: *http://www.fms.treas.gov/policycmia.*

SUPPLEMENTARY INFORMATION:

I. Background

We are revising our regulations at 31 CFR part 205 (part 205). Since we issued part 205 in 1992, we have issued a number of CMIA Policy Statements (Policy Statements) that address various issues relevant to part 205. One of the purposes of this final rule is to update the current regulations by deleting obsolete provisions and incorporating Policy Statements. Another purpose is to address various concerns that States, Federal agencies, and the General Accounting Office [1] have raised since the initial issuance of part 205. Specifically, the regulations:

(1) Provide greater flexibility in funding techniques;

(2) Ensure that Treasury-State agreements are unambiguous and auditable;

(3) Reflect new laws and directives, including the Single Audit Act Amendments of 1996, 31 U.S.C. chapter 75; Executive Order 12866 of September 30, 1993, Regulatory Planning and Review; and the Debt Collection Improvement Act of 1996; and, (4) Are clearer and, where possible, more concise.

We provided an earlier draft of the proposed rule to the National Association of State Auditors, Comptrollers and Treasurers, the National Governors' Association, the National Conference of State Legislatures, the Council of State Governments, and the National League of Cities and solicited comments from their membership. We also provided the draft proposed rule to the State of Colorado. Their comments were considered in the formulation of the proposed rule. Several States and State Associations commented on the proposed rule and, as described in more detail below, their comments were considered in the formulation of this final rule.

II. Summary of Comments

We received 57 written comments in response to the Notice of Proposed Rulemaking (NPRM) from State agencies, State Associations, and Federal agencies. Two issues were of particular interest to the commenters. These issues involve the application of CMIA to disallowed expenses (§ 205.15 of the NPRM) and the requirement of proportional drawdowns of Federal funds for certain grant programs (§ 205.25 of the NPRM). In addition to these two issues, commenters submitted numerous questions, comments and recommendations regarding several other sections. Responses to questions raised by commenters that did not impact the rule and, therefore, are not addressed in the Preamble to this rule, will be published on our web site at *http://www.fms.treas.gov/policycmia.* Substantive changes to the rule are summarized below.

Disallowances

Forty-seven of the fifty-seven commenters opposed the proposed provision in § 205.15 that would have imposed an interest liability on States for disallowed expenditures. The commenters opposed the NPRM's inclusion of disallowance coverage for four main reasons: the increased administrative burden imposed on States for tracking additional interest over longer time periods; the conflicts between existing Federal Program Agency regulations and the NPRM; the inequity caused by States being subject to interest liability if they lose an appeal, but no correlating provision describing Federal Program Agency liability; and the unfairness of the NPRM's interest accrual date being the date funds were drawn down and not the later date when a State is informed that a funds transfer was disallowed.

We have carefully considered the comments received relating to disallowances and the concerns raised therein. Based upon these comments and upon reconsideration of the intent of CMIA, we have deleted those provisions of the NPRM which would subject disallowances to interest liability under CMIA. This treatment of disallowed expenses is consistent with longstanding current practice.

The primary goal of CMIA is to improve the efficiency and effectiveness of funds transfers between the Federal government and States. Disallowances are reflective of program management disputes, not a lack of efficiency of funds transfers. Federal Program Agencies administering Federal programs are the authorities best suited to determine whether funds have been used for an allowable program purpose.

States are required to ensure that Federal funds are used solely for appropriate program purposes. Although disallowances are not governed by the CMIA regulations, they are covered by specific program regulations. In addition, disallowed expenses are subject to existing debt collection regulations.

Proportional Drawdowns

Eighteen State entities and five State Associations opposed proposed § 205.25 which would have required States that provide matching State funding and/or maintenance-of-effort (MOE) funding to coordinate a proportional drawdown of State and Federal funds to avoid interest liabilities.

The matter of proportional drawdowns was addressed in Policy Statements 7 (dated March 31, 1993) and 19 (dated June 1, 1999). These Policy Statements addressed the treatment of programs that incorporate (MOE) and ''matching'' requirements. Programs with MOE requirements provide a State with an amount of Federal funds and mandate that a State contribute a set minimum of their

[1] See Financial Management: ''Implementation of the Cash Management Improvement Act'' (Letter Report, 01/08/96, GAO/AIMD–96–4).

historical financial commitment as a condition for receiving Federal funds. Programs with matching requirements allow the Federal Program Agency and a State to share the costs of a program. For example, for every two dollars spent by the Federal Program Agency, a State must contribute one dollar.

The NPRM would have required that States contributing their own funds to a Federal-State program through a MOE requirement or matching program not draw down all Federal funds before State funds are used. The NPRM would have required that Federal and State funds be spent concurrently and in the appropriate proportion.

A large number of commenters noted that the proposed proportional drawdown provision was more prescriptive than are the specific regulations governing the programs. Several commenters noted that the NPRM requirements exceeded the Federal Program Agency requirements governing not only how Federal funds are disbursed, but how States spend their own funds. For example, several commenters indicated that the NPRM provision conflicts directly with the Social Services Block Grant (SSBG), the Child Care Development Fund (CCDF), and the Temporary Assistance for Needy Families (TANF) block grant requirements. These commenters further commented that the use and disbursement of State funds has nothing to do with the relationship between the Federal government and the State as it relates to Federal funds in the SSBG. Commenters also stated that TANF and CCDF funds should not be subject to the proportional drawdown requirement. These commenters noted that under the Federal TANF and CCDF programs agencies must meet the MOE requirement by the close of the fiscal year, but not on a proportional or ongoing basis. In addition, several commenters recommended that clarifications be made between programs that require MOE and those that require matching funds, and that this section not treat MOE in the same manner as State matching requirements. One commenter noted that while both involve cost sharing, the requirements are not the same and should not be treated as such in the regulations.

Commenters indicated that States require flexibility in administering block grant funds, given the complex funding structures associated with these funds. They stated that monitoring block grant funds closely to ensure proportionality creates an administrative burden for the States, particularly since many States have automated drawdown systems not capable of calculating proportional drawdown requests. One commenter wrote that this provision would cause such an administrative burden that it would result in a disincentive for States to voluntarily supplement their programs throughout the year.

One Federal Program Agency addressed this provision, recommending that the regulatory requirements applying to matching funds and MOE be clarified because they are two different types of funding mechanisms.

Based on comments received and additional research, the final rule recognizes that the different funding techniques associated with MOE, mandatory matching, and voluntary matching require proportional State contributions only in limited circumstances. We agree that the requirement in the NPRM for proportional drawdowns in programs that utilize MOE funding may be more prescriptive than are program requirements. Therefore, for programs utilizing MOE contributions from States, the final rule does not require concurrent proportional State contributions. This gives States the added flexibility that was intended for the administration of block grant programs and eases the burden associated with the use of in-kind contributions and funds being used across a large number of State agencies for one program. However, the CMIA regulations' interest provisions continue to apply to the Federal funds received by the State. The time between receiving these Federal funds and expending these funds for program purposes must continue to be minimized.

In programs utilizing voluntary matching contributions from States, the final rule does not require concurrent proportional State contributions. We believe that the CMIA regulations should not hinder States from making voluntary contributions to Federal/State programs. The CMIA regulations' interest provisions will continue to apply to Federal funds received by the State, but the CMIA regulations will not require proportional draws of State voluntary contributions.

In programs utilizing mandatory matching of funds, the requirement for proportional drawdowns is maintained in the final rule in § 205.15(d). Because of the nature of this funding technique, it is necessary to maintain a close linkage between State and Federal funding.

Section 205.2 What Definitions Apply to This Part?

Commenters stated that the proposed definition of ''administrative costs'' is too vague. They stated that because of the variances among grants a uniform definition of this term is not possible or desirable and would cause an undue burden on States in meeting Federal financial reporting requirements. A few commenters suggested that FMS remove this definition altogether from the regulations and others suggested tailoring the definition according to each specific grant program definition of the term. Because the rule describes the treatment of administrative costs under CMIA, a definition of administrative costs is necessary and is intentionally broad to ensure the variances among the many Federal programs are covered. The definition has been amended, however, to clarify that administrative costs include indirect costs.

Commenters noted that the definition of ''disburse'' should recognize that an off-line environment, such as the Electronic Benefit Transfers system, is also an option for the disbursement of funds. We agree with this recommendation and have amended the definition of ''disburse'' accordingly.

Commenters stated that the definition of ''indirect costs'' is too vague and should be narrowed to include only true indirect costs. These commenters noted that the definition should not be so broad as to include direct apportioned costs, which are used by public assistance agencies. One State entity added that the definition should not include allowable allocated costs.

Another State entity added that this definition cannot be standardized because it can have different meanings for different grants. The definition of indirect costs has not been changed. The definition is intentionally broad to ensure it encompasses the variances among Federal programs.

One commenter stated that the definition of ''indirect cost rate'' should be parallel to the definition in Office of Management and Budget (OMB) Circular A–87. We have declined to adopt this suggestion, but believe that the existing definition allows a State and FMS to agree to use indirect cost rates as defined in OMB Circular A–87.

Another commenter noted that the NPRM used the term ''direct cost'' in two different ways. The commenter recommended that this apparent discrepancy be clarified. The term ''direct cost'' as used within the definition of ''indirect cost rate'' is not intended to have the same meaning as that term is used elsewhere in the rule.

We agree that the use of the term ''direct cost'' to describe the costs a State incurs in calculating interest liabilities may be confusing. We have, therefore, changed the term describing the costs a State incurs in calculating interest liabilities to ''Interest Calculation Costs.''

One commenter expressed concern that the definition of ''compensating balances'' would result in increased costs to States, because it would require banking costs to be paid directly from grant funds. Under the NPRM, a State may not draw down funds from its account in the Unemployment Trust Fund in advance of immediate cash needs for any purpose including maintaining a compensating balance. Another commenter suggested that a definition should be included for ''immediate cash needs,'' to clarify the vagueness of the regulations. The definition of compensating balances was added to clarify existing policy regarding drawing down funds in advance of need. The rule merely states, consistent with the goals of CMIA, that funds, including funds drawn down for the purpose of maintaining a compensating balance, may not be drawn down in advance of need. This does not necessarily require that banking costs be paid directly from grant funds. For example, where a Treasury-State agreement establishes a funding technique that creates a State interest liability on funds drawn from the State's account in the Unemployment Trust Fund (e.g., pre-issuance funding), consistent with CMIA, a State may deduct its banking costs from any interest paid. However, States may not draw down funds in advance of need solely for the purpose of covering banking costs.

One commenter recommended that the definition of ''estimate'' be revised so that its usage is consistent in other sections in the regulations. Specifically, the commenter questioned whether the definition applies to references of drawing down Federal funds or in establishing future grant authority amounts. We agree that the term ''estimate'' is used in various sections of the rule in a manner which is inconsistent with how the term is defined. Accordingly, where appropriate, we have replaced the term ''estimate'' with the term ''project'' in §§ 205.10, 205.12, and 205.20.

Section 205.4 Are There any Circumstances Where a Federal Assistance Program That Meets the Criteria of § 205.3 Would Not Be Subject to This Subpart A?

This section allows, under limited circumstances, the exclusion of components of a major Federal assistance program from interest calculations if the State administers the program through several State agencies. Two commenters wrote that this section does not greatly reduce the State's administrative burden, particularly if the management of Federal funds is decentralized within the State. One of these commenters commented that if the agreement is with the State, the entire program should be covered. The other commenter recommended that if the State agencies covered in the agreement account for 90–95% or more of the total program expenditures, the amounts drawn by the remaining agencies should be assumed interest neutral and excluded from the calculations completely. We have not made changes to this section because we believe that, as proposed, it may reduce a State's administrative burden. Where a State administers a Federal financial assistance program through more than one State agency, the State is only required to track funding to a single agency and may pro-rate to determine interest liabilities funding to the remaining agency or agencies. Additionally, this method of calculating interest is optional and, therefore, need not be adopted if it creates a burden. Therefore, no changes to this section have been made.

Two commenters noted that proposed § 205.4(b)(1) does not result in the same exclusions as do the examples in the current CMIA Policy Statement 8 (dated April 19, 1993). In response, we have amended § 205.4(b)(1) to ensure that the final rule and Policy Statement 8 are consistent. States may exclude a component of a major Federal assistance program that is administered by multiple State agencies from the provisions of CMIA on the basis that the funding for that component is an immaterial percentage of the program. FMS will agree to this immaterial exception only if certain requirements are met. These requirements are that the dollar amount of the exempted cash flow or component may not exceed 5% of the State's Single Audit threshold, and the total amount excluded under a single program, by all State agencies administering the program, may not exceed 10% of the total program expenditures. If less than total program funding is subject to interest calculation procedures, the interest liabilities that are calculated under the program should be prorated to 100% of the program to provide the truest projection of interest liabilities.

The only Federal Program Agency commenting on this section suggested that this section be clarified to state that all major programs not already included in a Treasury-State agreement are covered by default procedures until the agreement is modified. We agree that it is important that new major programs be covered as soon as possible, however, we do believe that covering such programs by default procedures until such time as a Treasury-State agreement is modified is the most effective way to ensure prompt coverage. To address this concern, we have clarified in § 205.7 that States must inform us of new major programs in a timely manner (within 30 days) so that they may properly be included in a Treasury-State agreement.

Section 205.5 What Are the Thresholds for Major Federal Assistance Programs?

This section describes new thresholds for determining major Federal assistance programs, as well as the methodology to calculate the new thresholds. Many of the commenters wrote that the formulas included in this section were difficult to understand and, therefore, require further simplification. One commenter stated that it is not clear if the 10% comparison should be calculated each year that the Single Audit is issued or if it should be performed on a one-time basis. We have clarified that this is an annual requirement. We have also revised this section in an attempt to clarify the threshold calculations. Assistance in calculating the threshold can be found at *http://www.fms.treas.gov/policmia.*

Section 205.6 What Is a Treasury-State Agreement?

This section provides that Treasury-State agreements will remain in effect until terminated. Commenters suggested that we clarify that Treasury-State agreements can still be negotiated yearly if the parties desire to do so. This section has been amended to clarify that we and a State may still agree that a Treasury-State agreement will terminate on a specific termination date, where appropriate.

Section 205.7 Can a Treasury-State Agreement Be Amended?

Two commenters proposed that amendments to the Treasury-State agreement should be retroactive based on mutual consent by a State and FMS. We agree that there may be circumstances where it is appropriate for a change to a Treasury-State agreement to be effective as of the date the Treasury-State agreement was entered into. We have therefore amended this section to allow the parties to agree to the effective date of an amendment.

One commenter sought clarification on how soon after Single Audit data is available a State must notify FMS when a Treasury-State agreement needs to be amended due to Federal assistance program changes. This section has been amended to reflect that States must notify us of required amendments to the Treasury-State agreement within 30 days of the time the State becomes aware of the change.

Section 205.8 What If There Is No Treasury-State Agreement in Effect?

One commenter recommended there be a middle ground between establishing a Treasury-State agreement and resorting to default procedures, to prevent the entire agreement from going into default due to disagreement over coverage of a single program. In the ''middle ground'' case, default procedures would go into effect only for the program about which there is a disagreement; a Treasury-State agreement would be entered into for all other programs. We agree that where we and a State are unable to reach agreement over a particular program, we may impose default procedures for only that one program and, therefore, have incorporated this change.

Section 205.9 What Is Included in a Treasury-State Agreement?

This section describes information required to be in Treasury-State agreements, including applicable funding techniques, methodology regarding clearance patterns and estimates, and interest calculations. Two commenters described 205.9(g), which requires States and Federal agencies to describe the methods used to calculate interest liabilities, as excessive and contrary to efforts of reducing administrative burden. We have not changed this provision because we believe the required information is necessary to ensure that interest liabilities are being properly calculated.

Two commenters also stated that 205.9(f), which requires States to include the results of the clearance pattern process, is unnecessary and places an undue burden on States. One of these commenters noted that this burden is placed on States that use pre-issuance funding techniques when computing clearance patterns for inclusion in an agreement that will not be required to be used for interest calculations for over 15 months. In response to this comment, we have amended this section to reflect our intent that this section apply only to programs where funds are drawn based on clearance patterns. Pre-issuance States may provide the results of their clearance pattern process with their annual report.

Section 205.11 What Requirements Apply to Funding Techniques?

Many of the comments on this section addressed compensating balances. Although no change in the treatment of compensating balances was intended in the NPRM, some commenters interpreted the language as a new policy position that prohibited the use of Federal funds for compensating balances. It has been our longstanding policy position, consistent with the purpose of CMIA, that funds cannot be drawn down in advance of need. Because questions regarding compensating balances have arisen, this section of the rule is meant to merely clarify existing policy prohibiting the drawing down of funds for the purpose of maintaining a compensating balance. This does not prohibit those States that are required to have funds on hand before issuing checks from drawing down funds early nor does it prohibit those States from deducting their banking costs from any interest paid.

Section 205.12 What Funding Techniques May Be Used?

Some State Constitutions require that States have funds on hand before issuing checks. These pre-issuance States are allowed to draw funds early, but are subject to interest liability. The commenters strongly recommended retaining the current three-day drawdown window for pre-issuance States, rather than the two-day window proposed in the NPRM. One State said the proposed two-day drawdown window was ''arbitrary and unrealistic'' while another State entity called it ''unnecessary and restrictive.'' We agree that the two-day window proposed in the NPRM may not give States sufficient time to ensure that funds are on hand prior to the issuance of payments. This section has, therefore, been amended to retain the three-day drawdown window that currently exists.

Section 205.13 How Do You Determine When State or Federal Interest Liability Accrues?

One commenter wrote that the indirect costs referenced in § 205.13(b) should be for Statewide indirect costs, not agency specific costs. Another commenter recommended clarifying § 205.13(b) by including specific reference to costs allocated through a Federally-approved public assistance cost allocation plan or through a Federally-approved Statewide cost allocation plan. Based on these comments, we have made changes in the final rule. States will be allowed to apply a Statewide indirect cost rate or a public assistance indirect cost rate, where appropriate. The cost rate must be consistent with OMB Circular A–87, including Attachments.

Section 205.14 When Does Federal Interest Liability Accrue?

Three commenters requested clarification on how interest is calculated when obligational authority is established after an expenditure is made. Under § 205.14(a)(2), Federal interest liability may accrue when States expend their own funds for program purposes and obligational authority is subsequently established to cover those expenditures. In accordance with § 205.14(a)(1), this Federal interest liability is calculated from the time of expenditure. Paragraph (a)(2) has been amended to clarify this intent.

One commenter commented that § 205.14(c) conflicts with § 205.14(a)(1). Section 205.14(c) requires that a State adhere to Federal disbursement schedules when requesting funds; § 205.14(a)(1) states that interest begins to accrue against the Federal government whenever a State advances funds for program purposes. We do not agree that these two provisions conflict. Section 205.14(a)(1) contains the general rule regarding the accrual of Federal interest liabilities. Section 205.14(c) contains an exception to that rule, namely, we may deny interest liability even if a State advances its own funds for program purposes if it does so because it failed to timely request a drawdown of the funds. To clarify this in the rule, we have added the phrase ''notwithstanding any other provision of this section'' at the beginning of 205.14(c).

One Federal Program Agency recommended that there be no Federal interest liability for implementation of new activities by the State until the Federal Program Agency approves the new plan(s) and/or system projects. The same agency proposed adding language to this section saying no Federal interest will accrue while approval is pending. In response to these comments, we have modified the provisions of paragraph (a)(2) to allow for greater flexibility to deny interest in certain circumstances where a State expends its own funds without Federal approval even if obligational authority is subsequently established. For example, if a State is required to have an approved State plan in effect as a pre-condition to Federal funding and makes an expenditure prior to the time the plan has been approved, we may deny Federal interest liability if

the State failed to act reasonably in obtaining Federal approval.

Section 205.15 When Does State Interest Liability Accrue?

As previously discussed, the provisions addressing interest liability on disallowances have been deleted.

The final rule clarifies that for mandatory matching programs, the interest provisions of the CMIA regulations apply when a State draws Federal funds in advance or in excess of State funds.

Section 205.16 What Special Rules Apply to Federal Assistance Programs and Projects Funded by the Federal Highway Trust Fund?

One commenter disagreed with the policy on valid projects that experience an unforeseen cost overrun. Under this section, a State that advances its own funds because of cost overruns may be reimbursed later by the Federal Highway Administration. However, no CMIA interest will be paid to the State, even though it advanced its own funds. The policy, which has not changed from the existing rule, is intended to discourage cost overruns. Accordingly we have not made any changes to this provision.

Section 205.18 Are Administrative Costs Subject to This Part?

One commenter questioned why the determination of whether indirect and administrative costs are subject to subpart A is based upon whether the grants are wholly dedicated to these purposes. Another commenter noted that the exclusion in 205.18(b) exempting the administrative and indirect cost portions of Federal Program Agency grants from subpart A of the regulations may prevent States from collecting interest from Federal Program Agencies. One commenter sought a definition or example of ''administrative costs'' while another stated that the regulations should not provide a definition at all, but rely on how the term is defined by the Federal Program Agency responsible for that particular program. One Federal Program Agency suggested that the provision clearly state that drawdowns for indirect costs must be related to timing of the associated direct costs.

While the intent of this provision was to ease the burden on States of tracking administrative and indirect costs which were only a portion of a Federal award, we nevertheless agree that whether an award is wholly or partially dedicated to indirect and administrative costs should not be the basis for determining whether or not CMIA interest applies. We have, therefore, amended this section to clarify that when States and Treasury agree, in a Treasury-State agreement, to specified funding techniques for administrative costs (including Statewide or public assistance indirect costs, if appropriate, consistent with OMB Circular A–87), no interest liability will accrue provided the agreed upon funding technique is followed. This rule will apply whether the Federal grant is dedicated wholly or partially to administrative costs.

Section 205.21 When May Clearance Patterns Be Used?

One commenter recommended amending § 205.21(b) to delete the reference to § 205.9, since that commenter felt the provisions contained therein are excessive, unreasonably burdensome, and will be costly to develop and incorporate in Treasury-State agreements. We have not adopted this recommendation because, without the required information, we cannot ensure the accuracy of clearance patterns. The costs of developing clearance patterns in support of interest calculations may be considered Interest Calculation Costs.

Section 205.23 What Requirements Apply to Estimates?

One commenter noted that the provisions of this section are counter to most, if not all, of the program regulations on block grant programs. This commenter suggested that forcing a State to list ''hard and fast'' rules in a Treasury-State agreement defeats the purpose and intent of block grant law. We do not agree because the requirements of this section apply only when the funds transfer procedures agreed upon by us and a State are based on estimates. Where the use of estimates is not agreed upon, the requirements do not apply.

Consistent with changes made to § 205.25 on proportional draws, the restrictions on MOE and voluntary matching have been removed from the final rule.

Commenters also sought clarification on the use of the term ''estimates'' in the proposed regulations. We agree that the term ''estimate'' is used in various sections of the rule in a manner which is inconsistent with how the term is defined. Accordingly, where appropriate, we have replaced the term ''estimate'' with the term ''project'' in §§ 205.10, 205.12, and 205.20. The use of the term ''estimate'' in § 205.23 remains unchanged.

Section 205.25 How Does This Part Apply to Certain Federal Assistance Programs or Funds?

In addition to comments received on the issue of proportional drawdowns, discussed above, two commenters recommended that this section be amended to allow States the option of maintaining a compensating balance to offset the actual benefit and clearing account banking charges incurred. These same commenters also suggested that the final rule allow States to earn non-cash credits to offset legitimate banking charges related to the Unemployment Insurance Trust Fund.

We have declined to adopt this recommendation because maintaining a compensating balance is not consistent with the goals of CMIA. Under CMIA, States must minimize the time elapsing between the receipt of funds from the Federal government and the payment of those funds to program beneficiaries. Maintaining funds drawn down from the Federal government in a bank account for the purpose of covering banking expenses is inconsistent with that goal. As previously noted, however, nothing in this rule prohibits us and a State from agreeing, in a Treasury-State agreement, to a funding technique that creates a State interest liability on funds drawn from the State's account in the Unemployment Trust Fund (e.g., pre-issuance funding). Where a State incurs an interest liability on funds drawn from the State's account in the Unemployment Trust Fund, banking costs may be deducted from any interest paid.

Section 205.26 What Are the Requirements for Preparing Annual Reports?

This section requires States to submit supporting documentation for all liability claims greater than $5,000. One commenter was in favor of increasing the documentation threshold to $10,000. Another recommended deleting the requirement of documentation for claims in excess of $5,000. A third commenter recommended requiring the $5,000 supporting documentation only in cases when the funding technique used would not normally be expected to result in a Federal interest liability. We have not adopted these recommendations because we are of the view that this requirement is necessary to ensure that claims are verified when appropriate.

Section 205.27 How Are Interest Calculation Costs Calculated?

The title of this section has been amended to eliminate the confusion

caused by use of the term ''direct costs'' to describe those costs incurred by a State in performing the interest calculations required under CMIA. The term ''direct costs'' has been replaced with the term ''Interest Calculation Costs.'' Two commenters suggested that Interest Calculation Costs should not be limited to amounts that can be offset against interest owed by the States to the Federal government. Two commenters recommended that the definition of ''interest calculation'' be broadened to allow more costs to be charged. One of these commenters wrote that, in order to measure the cost benefit of the CMIA program, CMIA-related costs need to be recovered by the program. We do not believe that CMIA permits us to expand the definition of Interest Calculation Costs. The CMIA limits those costs which may be claimed by States to costs incurred for interest calculations. The statute does not provide a mechanism for paying these costs other than to offset them from amounts otherwise owed by States. Additionally, in our view the $50,000 limitation imposed by this section is reasonable and appropriate.

Section 205.30 What Are the Federal Oversight and Compliance Responsibilities?

One Federal Program Agency submitted comments proposing a time period of at least 30 days to review States' Annual Reports. We agree that a 30-day time period to review States' annual reports is reasonable and have incorporated this change.

Section 205.31 How Does a State or Federal Program Agency Appeal a Determination Made by us and Resolve Disputes?

One commenter recommended shortening the 90-day periods for appeals and rebuttals to 30-day periods. We have not adopted this recommendation because we believe 90 days is warranted to ensure that appeals and rebuttals are carefully considered and thoroughly reviewed. Another commenter suggested removing the discretion granted to the FMS Assistant Commissioner on approving when disputes can be moved along the Administrative Dispute Resolution Act (ADRA) track. Because the use of alternative dispute resolution procedures requires the agreement of all parties, we have declined to adopt this recommendation.

Subpart B

Section 205.35 What Is the Result of Federal Program Agency or State Non-compliance?

One commenter wrote that §§ 205.3(b), 205.3(c), and 205.35 seemed contradictory and requested clarification regarding whether or not individual programs covered by subpart B could be moved to subpart A. Section 205.35 has been clarified to reflect our intent that under § 205.35 we may, at our discretion, move a program that falls below the threshold for a major Federal assistance program from subpart B to subpart A without lowering the threshold applicable to other programs.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. These regulations will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These regulations do not alter the budgetary effects of entitlement, grants, user fees, or loan programs, or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this final rule easier to understand.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not require any actions on the part of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the final rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and has assigned clearance number 1510–0061. Sections of this final rule with information collection requirements are §§ 205.9, 205.26, 205.27, 205.29, and we estimate the public reporting burden of these sections to average, respectively, 500 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. We estimate the number of respondents to be 56. No comments were received regarding this burden estimate or any other aspect of this collection of information.

List of Subjects in 31 CFR Part 205

Administrative practice and procedure, Electronic funds transfers, Grant programs, Intergovernmental relations.

Authority and Issuance

For the reasons set out in the Preamble, we revise Part 205 of title 31 of the Code of Federal Regulations to read as follows:

PART 205—RULES AND PROCEDURES FOR EFFICIENT FEDERAL-STATE FUNDS TRANSFERS

Sec.

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3332, 3335, 6501, 6503.

§ 205.1 What Federal assistance programs are covered by this part?

(a) This part prescribes rules for transferring funds between the Federal government and States for Federal assistance programs. This part applies to:

(1) All States as defined in § 205.2; and

(2) All Federal program agencies, except the Tennessee Valley Authority (TVA) and its Federal assistance programs.

(b) Only programs listed in the Catalog of Federal Domestic Assistance, as established by Chapter 61 of Title 31, United States Code (U.S.C) are covered by this part.

(c) This part does not apply to:

(1) Payments made to States acting as vendors on Federal contracts, which are subject to the Prompt Payment Act of 1982, as amended, 31 U.S.C. 3901 *et seq.*, 5 CFR Part 1315, and 48 CFR Part 32; or

(2) Direct loans from the Federal government to States.

§ 205.2 What definitions apply to this part?

For purposes of this part:

Administrative Costs means expenses incurred by a State associated with managing a Federal assistance program. This term includes indirect costs.

Auditable means records must be retained to allow for calculations outlined in the Treasury-State agreements to be reviewed and replicated for compliance purposes. States must maintain these records to be readily available, fully documented, and verifiable.

Authorized State Official means a person with the authority under the laws of a State to make commitments on behalf of the State for the purposes of this part, or that person's official designee as certified in writing.

Business Day means a day when Federal Reserve Banks are open.

Catalog of Federal Domestic Assistance (CFDA) means the government-wide list of Federal assistance programs, projects, services, and activities which provide assistance or benefits to the American public. The listing includes financial and non-financial Federal assistance programs administered by agencies of the Federal government.

Clearance Pattern means a projection showing the daily amount subtracted from a State's bank account each day after the State makes a disbursement. For example, a State mailing out benefit checks may project that the percentage of checks cashed each day will be 0% for the first day, 10% for the second day, 80% on the third day, and 10% on the fourth day following issuance. Clearance patterns are used to schedule the transfer of funds with various funding techniques and to support interest calculations.

Compensating Balance means funds maintained in State bank accounts and/or State Treasurer bank accounts to offset the costs of bank services.

Current Project Cost means a cost for which the State has recorded a liability on or after the day that the State last requested funds for the project.

Day means a calendar day unless otherwise specified.

Default Procedures means efficient cash management practices that we prescribe for Federal funds transfers to a State if a Treasury-State agreement is not in place.

Disburse means to issue a check or initiate an electronic funds transfer payment, or to provide access to benefits through an electronic benefits transfer.

Discretionary Grant Project means a project for which a Federal Program Agency is authorized by law to exercise judgment in awarding a grant and in selecting a grantee, generally through a competitive process.

Dollar-Weighted Average Day of Clearance means the day when, on a cumulative basis, 50 percent of funds have been paid out. To calculate the dollar-weighted average day of clearance for a clearance pattern:

(1) For each day, multiply the percentage of dollars paid out that day by the number of days that have elapsed since the payments were issued. For example, on the first day payments were issued, multiply the percentage of dollars paid out on that day by zero, since zero days have elapsed. On the day after payments were issued, multiply the percentage of dollars paid out on that day by one, since one day has elapsed; and so forth.

(2) Total the results from paragraph (1) of this definition. Round to the nearest whole number. This is the dollar-weighted average day of clearance.

Draw Down (verb) means a process in which a State requests and receives Federal funds.

Drawdown (noun) means Federal funds requested and received by a State.

Electronic Funds Transfer (EFT) means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

Estimate means a projection of the needs of a Federal Assistance Program.

Federal Assistance Program means a program included in the Catalog of Federal Domestic Assistance where funds are transferred from the Federal government to a State. Federal assistance programs include cooperative agreements, but do not include vendor payments or direct loans.

Federal Program Agency means an executive agency as defined by 31 U.S.C. 102, except the Tennessee Valley Authority (TVA), that issues and administers Federal assistance programs to States or cooperative agreements with States.

Federal-State Agreement means an agreement between a State and a Federal Program Agency specifying terms and conditions for carrying out a Federal assistance program or group of programs. This is different than a Treasury-State agreement.

Financial Management Service (we or us) means the Bureau of the U.S. Department of the Treasury responsible for implementation of this part.

Fiscal Year means the twelve-month period that a State designates as its budget year.

Grant means, for purposes of this part, a funds transfer by the Federal government associated with a Federal assistance program listed in the Catalog of Federal Domestic Assistance.

Indirect Cost Rate means a formula that identifies the amount of indirect costs based on the amount of accrued direct costs. The applicable indirect cost rate shall be described in the Treasury-State agreement.

Indirect Costs means costs a State incurs that are necessary to the operation and performance of its Federal assistance programs, but that are not readily identifiable with a particular project or Federal assistance program.

Interest Calculation Costs means those costs a State incurs in performing the actual calculation of interest liabilities, including those costs a State incurs in developing and maintaining clearance patterns in support of interest calculations.

Maintenance-of-Effort means a requirement that a State spend at least a specified amount of State funds for Federal assistance program purposes.

Major Federal Assistance Program means a Federal assistance program which receives Federal funding in excess of the dollar thresholds found in Table A to § 205.5.

Obligational Authority means the existence of a definite commitment on the part of the Federal government to provide appropriated funds to a State to carry out specified programs, whether the commitment is executed before or after a State pays out funds for Federal assistance program purposes.

Pay Out means to debit the State's bank account.

Pay Out Funds for Federal Assistance Program Purposes means, in the context of State payments, to debit a State account for the purpose of making a payment to:

(1) A person or entity that is not considered part of the State pursuant to the definition of ''State'' in this section; or

(2) A State entity that provides goods or services for the direct benefit or use of the payor State entity or the Federal government to further Federal assistance program goals.

Rebate means funds returned to a State by third parties after a State has paid out those funds for Federal assistance program purposes.

Refund means funds that a State recovers that it previously paid out for Federal assistance program purposes. Refunds include rebates received from third parties.

Refund Transaction means an entry to the record of a State bank account representing a single deposit of refunds. A refund transaction may consist of a single check or item, or a bundle of accumulated checks.

Related Banking Costs means separately identified costs which are necessary and customary for maintaining an account in a financial institution, whether a commercial account or a State Treasurer account. Investment service fees and fees for credit-related services are not related banking costs.

Request for Funds means a State's request for funds that the State completes and submits in accordance with Federal Program Agency guidelines.

Reverse Flow Program means a Federal assistance program, such as Supplemental Security Income (SSI), for which the Federal government makes payments to recipients on behalf of a State.

Revolving Loan Fund means a pool of program funds managed by a State. States may loan funds from the pool to other entities in support of Federal assistance program goals. Investment income is earned on the funds that remain in the pool and on loans made from pool funds. A Federal Program Agency may require that all income derived from a revolving loan fund be used for Federal assistance program purposes.

Secretary means the Secretary of the United States Department of the Treasury. We are the Secretary's representative in all matters concerning this part, unless otherwise specified.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands. It includes any agency, instrumentality, or fiscal agent of a State that is legally and fiscally dependent on the State Executive, State Treasurer, or State Comptroller.

(1) A State agency or instrumentality is any organization of the primary government of the State financial reporting entity, as defined by generally accepted accounting principles.

(2) A fiscal agent of a State is an entity that pays, collects, or holds Federal funds on behalf of the State in furtherance of a Federal assistance program, excluding private nonprofit community organizations.

(3) Local governments, Indian Tribal governments, institutions of higher education, hospitals, and nonprofit organizations are excluded from the definition of State.

Treasury-State agreement means a document describing the accepted funding techniques and methods for calculating interest and identifying the Federal assistance programs governed by this subpart A.

Trust Fund for Which the Secretary Is the Trustee means a trust fund administered by the Secretary.

Vendor Payment means a funds transfer by a Federal Program Agency to a State to compensate the State for acting as a vendor on a Federal contract.

We and Us means Financial Management Service.

Subpart A—Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement

§ 205.3 What Federal assistance programs are subject to this subpart A?

(a) Generally, this subpart prescribes the rules that apply to Federal assistance programs which:

(1) Are listed in the Catalog of Federal Domestic Assistance;

(2) Meet the funding threshold for a major Federal assistance program; and

(3) Are included in a Treasury-State agreement or default procedures.

(b) Upon a State's request, we will make additional Federal assistance programs subject to subpart A by lowering the funding threshold in the Treasury-State agreement. All of a State's programs that meet this lower threshold would be subject to this subpart A.

(c) We may make additional Federal assistance programs subject to subpart A if a State or Federal Program Agency fails to comply with subpart B of this part.

§ 205.4 Are there any circumstances where a Federal assistance program that meets the criteria of § 205.3 would not be subject to this subpart A?

(a) A Federal assistance program that meets or exceeds the threshold for major Federal assistance programs in a State is not subject to this subpart A until it is included in a Treasury-State agreement or in default procedures.

(b) We and a State may agree to exclude components of a major Federal assistance program from interest calculations if the State administers the program through several State agencies and meets the following requirements:

(1) The dollar amount of the exempted cash flow does not exceed 5% of the State's major Federal assistance program threshold and the total amount excluded under a single program by all State agencies administering the program does not exceed 10% of that Federal assistance program's total expenditures;

(2) If less than the total amount of Federal assistance program funding is subject to interest calculation procedures, the interest liabilities should be pro-rated to 100% of the Federal assistance program funding;

(3) A State may not use this exclusion if a Federal assistance program is administered by only one State agency; and

(4) We may request Federal assistance program specific data on funding levels to determine exemptions.

(c) We and a State may exclude a Federal assistance program from this subpart A if the Federal assistance program has been discontinued since the most recent Single Audit and the remaining funding is below the threshold, or if the Federal assistance program is funded by an award not limited to one fiscal year and the remaining Federal assistance program funding is below the State's threshold.

§ 205.5 What are the thresholds for major Federal assistance programs?

(a) Table A of this section defines major Federal assistance programs based on the dollar amount of an individual Federal assistance program and the dollar amount of all Federal assistance being received by a State for all Federal assistance programs including non-cash programs. A State must locate the appropriate row in Column A based upon the total amount of Federal assistance received. In that same row, a State must apply the percentage from Column B to the dollar value of all its Federal assistance programs to determine the State's threshold for major Federal assistance programs. For example, if the total amount received by a State for all Federal assistance programs is $50 million, then that State's threshold for major Federal assistance programs is 6% of $50 million or $3 million. A State which receives more than $10 billion under Federal assistance programs will have a minimum default threshold of $60 million.

(b) To ensure adequate coverage of all State programs, a State must, on an annual basis, compare its program coverage using the percentage obtained from Table A to the program coverage which would result using a percentage which is half of the percentage obtained from Table A. For example, a State receiving $1 billion in Federal Assistance would use Table A to learn that its threshold level would be .60 percent of $1 billion. A State would compare program coverage at .60 percent of $1 billion to program coverage at .30 percent of $1 billion.

(c) If the comparison conducted under paragraph (b) of this section results in a reduction of program coverage that is greater than 10%, a State must lower its threshold, or add programs, until the difference is less than or equal to 10%.

(d) In accordance with § 205.3(b), a State may lower its threshold to include additional programs. All of a State's programs that meet this lower threshold would be subject to this subpart A.

(e) Unless specified otherwise, major Federal assistance programs must be determined from the most recent Single Audit data available.

TABLE A TO § 205.5

Column A Total amount of Federal Assistance for all programs per State:	Column B Major Federal Assistance Program means any Federal assistance program that exceed these levels:
Between zero and $100 million inclusive.	6.00 percent of the total amount of Federal assistance.
Over $100 million but less than or equal to $10 billion.	0.60 percent of the total amount of Federal assistance.
Over $10 billion.	The greater of 0.30 percent of the total Federal assistance of $60 million.

§ 205.6 What is a Treasury-State agreement?

(a) A Treasury-State agreement documents the accepted funding techniques and methods for calculating interest agreed upon by us and a State and identifies the Federal assistance programs governed by this subpart A. If anything in a Treasury-State agreement is inconsistent with this subpart A, that part of the Treasury-State agreement will not have any effect and this subpart A will govern.

(b) A Treasury-State agreement will be effective until terminated unless we and a State agree to a specific termination date. We or a State may terminate a Treasury-State agreement on 30 days written notice.

§ 205.7 Can a Treasury-State agreement be amended?

(a) We or a State may amend a Treasury-State agreement at any time if both we and the State agree in writing.

(b) The effective date of an amendment shall be the date both parties agree to the amendment in writing unless otherwise agreed to by both parties.

(c) We and a State must amend a Treasury-State agreement as needed to change or clarify its language when the terms of the existing agreement are either no longer correct or no longer applicable. A State must notify us in writing within 30 days of the time the State becomes aware of a change, describing the Federal assistance program change. The notification must include a proposed amendment for our review and a current list of all programs included in the Treasury-State agreement. Amendments may address, but are not limited to:

(1) Additions or deletions of Federal assistance programs subject to this subpart A;

(2) Changes in funding techniques; and

(3) Changes in clearance patterns.

(d) Additions or deletions to the list of Federal assistance programs subject to this subpart A take effect when a Treasury-State agreement is amended, unless otherwise agreed to by the parties.

(e) Federal assistance programs that are to be added to a Treasury-State agreement are not subject to this subpart A until the Treasury-State agreement is amended, except when a Federal assistance program subject to this subpart A is being replaced by a Federal assistance program governed by subpart B of this part, in which case the replacement program is immediately subject to this subpart A.

(f) Notwithstanding any other provision of this section, if no changes to the Treasury-State agreement are required, States must notify us annually.

§ 205.8 What if there is no Treasury-State agreement in effect?

When a State does not have a Treasury-State agreement in effect, we will prescribe default procedures to implement this subpart A. The default procedures will prescribe efficient funds transfer procedures consistent with State and Federal law and identify the covered Federal assistance programs and designated funding techniques. When we and a State reach agreement on some but not all Federal assistance programs administered by the State, we and the State may enter into a Treasury-State agreement for all programs on which we are in agreement and we may prescribe default procedures governing those programs on which we are unable to reach agreement.

§ 205.9 What is included in a Treasury-State agreement?

We will prescribe a uniform format for all Treasury-State agreements. A Treasury-State agreement must include, but is not limited to, the following:

(a) State agencies, instrumentalities, and fiscal agents that administer the

Federal assistance programs subject to this subpart A.

(b) Federal assistance programs subject to this subpart A, consistent with §§ 205.3 and 205.4. A State must use its most recent Single Audit report as a basis for determining the funding thresholds for major Federal assistance programs, unless otherwise specified in the Treasury-State agreement. A State may use budget or appropriations data for a more recent period instead of Single Audit data, if specified in the Treasury-State agreement.

(c) Funding techniques to be applied to Federal assistance programs subject to this subpart A.

(d) Methods the State will use to develop and maintain clearance patterns and estimates, consistent with § 205.11. The method must include, at a minimum, a clear indication of:

(1) The data used;

(2) The sources of the data;

(3) The development process;

(4) For estimates, when and how the State will update the estimate to reflect the most recent data available;

(5) For estimates, when and how the State will make adjustments, if any, to reconcile the difference between the estimate and the State's actual cash needs; and

(6) Any assumptions, standards, or conventions used in converting the data into the clearance pattern or estimate.

(e) Federal Program Agency provisions requiring reconciliation of estimates to actual outlays may be included in a Treasury-State agreement. The supporting documentation must be retained by the State for three years.

(f) States must include the results of the clearance pattern process in the Treasury-State agreement for programs where the timing of drawdowns is based on clearance patterns. For programs where the timing of drawdowns is not based on clearance patterns, the results of the clearance pattern process may be provided with the annual report required under § 205.26. The supporting documentation must be retained by the State for three years.

(g) Methods used by the State and Federal agencies to calculate interest liabilities pursuant to this subpart A. The method must include, but is not limited to, a clear indication of:

(1) The data used;

(2) The sources of the data;

(3) The calculation process; and

(4) Any assumptions, standards, or conventions used in converting the data into the interest liability amounts.

(h) Treasury-State agreements must include language describing how a State and Federal Program Agency will address a State request for supplemental funding. This language must include, but is not limited to, the following provisions:

(1) What constitutes a timely request for supplemental funds for Federal assistance program purposes by a State; and

(2) What constitutes a timely transfer of supplemental funds for Federal assistance program purposes from a Federal Program Agency to a State.

§ 205.10 How do you document funding techniques?

The Treasury-State agreement must include a concise description for each funding technique that a State will use. The description must include the following:

(a) What constitutes a timely request for funds;

(b) How the State determines the amount of funds to request;

(c) What procedures are used to project or reconcile estimates with actual and immediate cash needs;

(d) What constitutes the timely receipt of funds; and

(e) Whether a State or Federal interest liability accrues when the funding technique, including any associated procedure for projection or reconciliation, is properly applied.

§ 205.11 What requirements apply to funding techniques?

(a) A State and a Federal Program Agency must minimize the time elapsing between the transfer of funds from the United States Treasury and the State's payout of funds for Federal assistance program purposes, whether the transfer occurs before or after the payout of funds.

(b) A State and a Federal Program Agency must limit the amount of funds transferred to the minimum required to meet a State's actual and immediate cash needs.

(c) A State must not draw down funds from its account in the Unemployment Trust Fund (UTF) or from a Federal account in the UTF in advance of actual immediate cash needs for any purpose including maintaining a compensating balance.

(d) A Federal Program Agency must allow a State to submit requests for funds daily. This requirement should not be construed as a change to Federal Program Agency guidelines defining a properly completed request for funds.

(e) In accordance with the electronic funds transfer provisions of the Debt Collection Improvement Act of 1996 (31 U.S.C. 3332), a Federal Program Agency must use electronic funds transfer methods to transfer funds to States unless a waiver is available.

§ 205.12 What funding techniques may be used?

(a) We and a State may negotiate the use of mutually agreed upon funding techniques. We may deny interest liability if a State does not use a mutually agreed upon funding technique. Funding techniques should be efficient and minimize the exchange of interest between States and Federal agencies.

(b) We and a State may base our agreement on the sample funding techniques listed in paragraphs (b)(1) through (b)(5) of this section, or any other technique upon which both parties agree.

(1) Zero balance accounting means that a Federal Program Agency transfers the actual amount of Federal funds to a State that are paid out by the State each day.

(2) Projected clearance means that a Federal Program Agency transfers to a State the projected amount of funds that the State pays out each day. The projected amount paid out each day is determined by applying a clearance pattern to the total amount the State will disburse.

(3) Average clearance means that a Federal Program Agency, on the dollar-weighted average day of clearance of a disbursement, transfers to a State a lump sum equal to the actual amount of funds that the State is paying out. The dollar-weighted average day of clearance is the day when, on a cumulative basis, 50 percent of the funds have been paid out. The dollar-weighted average day of clearance is calculated from a clearance pattern, consistent with § 205.20.

(4) Cash advance (pre-issuance or post-issuance) funding means that a Federal Program Agency transfers the actual amount of Federal funds to a State that will be paid out by the State, in a lump sum, not more than three business days prior to the day the State issues checks or initiates EFT payments.

(5) Reimbursable funding means that a Federal Program Agency transfers Federal funds to a State after that State has already paid out the funds for Federal assistance program purposes.

§ 205.13 How do you determine when State or Federal interest liability accrues?

(a) State or Federal interest liability may or may not accrue when mutually agreed to funding techniques are applied, depending on the terms of the Treasury-State agreement.

(b) We and a State may agree in a Treasury-State agreement that no State or Federal interest liability will accrue for indirect costs or indirect allocated costs based on an indirect cost rate. This

indirect cost must be consistent with OMB Circular A–87 (For availability, see 5 CFR 1310.3.) and be in accordance with this subpart A. The indirect cost rate may be a Statewide indirect cost rate or a public assistance cost rate, where appropriate.

§ 205.14 When does Federal interest liability accrue?

(a) Federal interest liabilities may accrue in accordance with the following provisions:

(1) The Federal Program Agency incurs interest liability if a State pays out its own funds for Federal assistance program purposes with valid obligational authority under Federal law, Federal regulation, or Federal-State agreement. A Federal interest liability will accrue from the day a State pays out its own funds for Federal assistance program purposes to the day Federal funds are credited to a State bank account.

(2) If a State pays out its own funds for Federal assistance program purposes without obligational authority, the Federal Program Agency will incur an interest liability if obligational authority subsequently is established. However, if the lack of obligational authority is the result of the failure of the State to comply with a Federal Program Agency requirement established by statute, regulation, or agreement, interest liability may be denied. A Federal interest liability will accrue from the day a State pays out its own funds for Federal assistance program purposes to the day Federal funds are credited to a State bank account.

(3) If a State pays out its own funds prior to the day a Federal Program Agency officially notifies the State in writing that a discretionary grant project is approved, the Federal Program Agency does not incur an interest liability, notwithstanding any other provision of this section.

(4) If a State pays out its own funds prior to the availability of Federal funds authorized or appropriated for a future Federal fiscal year, the Federal Program Agency does not incur an interest liability, notwithstanding any other provision of this section.

(5) If a State fails to request funds timely as set forth in § 205.29, or otherwise fails to apply a funding technique properly, we may deny any resulting Federal interest liability, notwithstanding any other provision of this section.

(b) Federal Program Agency programs that have specific payment dates set by the Federal Program Agency that create interest liabilities are subject to this part.

(c) States must adhere to Federal Program Agency disbursement schedules when requesting funds. Notwithstanding any other provision of this section, we may deny a State's claim for Federal interest liability for the period prior to a late drawdown request. States must time their funds drawdown so that it does not create Federal interest liability. The drawdown request must allow the Federal Program Agency sufficient time to meet its disbursement schedule. If the Federal Program Agency does not make a timely payout in accordance with the terms of the Treasury-State agreement, a State may submit a claim for interest liability.

§ 205.15 When does State interest liability accrue?

(a) *General rule.* State interest liability may accrue if Federal funds are received by a State prior to the day the State pays out the funds for Federal assistance program purposes. State interest liability accrues from the day Federal funds are credited to a State account to the day the State pays out the Federal funds for Federal assistance program purposes.

(b) *Refunds.* (1) A State incurs interest liability on refunds of Federal funds from the day the refund is credited to a State account to the day the refund is either paid out for Federal assistance program purposes or credited to the Federal government.

(2) We and a State may agree, in a Treasury-State agreement, that a State does not incur an interest liability on refunds in refund transactions under $50,000.

(c) *Exception to the general rule.* A State does not incur an interest liability to the Federal government if a Federal statute requires the State to retain or use for Federal assistance program purposes the interest earned on Federal funds, notwithstanding any other provision in this section.

(d) *Mandatory matching of Federal funds.* In programs utilizing mandatory matching of Federal funds with State funds, a State must not arbitrarily assign its earliest costs to the Federal government. A State incurs interest liabilities if it draws Federal funds in advance and/or in excess of the required proportion of agreed upon levels of State contributions in programs utilizing mandatory matching of Federal funds with State funds.

§ 205.16 What special rules apply to Federal assistance programs and projects funded by the Federal Highway Trust Fund?

The following applies to Federal assistance programs and projects funded out of the Federal Highway Trust Fund, notwithstanding any other provision of this part:

(a) A State must request funds at least weekly for current project costs, or Federal interest liability will not accrue prior to the day a State submits a request for funds.

(b) If a State pays out its own funds in the absence of a project agreement or in excess of the Federal obligation in a project agreement, the Federal Program Agency will not incur an interest liability.

§ 205.17 Are funds transfers delayed by automated payment systems restrictions based on the size and timing of the drawdown request subject to this part?

Funds transfers delayed due to payment processes that automatically reject drawdown requests that fall outside a pre-determined set of parameters are subject to this part.

§ 205.18 Are administrative costs subject to this part?

(a) A State and FMS may agree, in a Treasury-State agreement, to the following funding conventions for indirect costs and administrative costs:

(1) The State will draw down a prorated amount of administrative costs on the date of the State payday. For example, the State would draw one-third of its quarterly administrative costs if payroll is monthly, or one-sixth of its quarterly administrative costs if payroll is semi-monthly.

(2) If an indirect cost rate is applied to a program, the State will include a proportionate share of the indirect cost allowance on each drawdown by applying the indirect cost rate to the appropriate direct costs on each drawdown.

(3) If costs must be allocated to various programs pursuant to a labor distribution or other system under an approved cost allocation plan, the State will draw down funds to meet cash outlay requirements based on the most recent, certified cost allocations, with subsequent adjustments made pursuant to the actual allocation of costs.

(b) Notwithstanding any other provision of this part, no interest liabilities will be incurred or calculated for indirect costs and administrative costs, provided the funding conventions described in paragraph (a) of this section are properly applied.

§ 205.19 How is interest calculated?

(a) A State must calculate Federal interest liabilities and State interest liabilities for each Federal assistance program subject to this subpart A.

(b) The interest rate for all interest liabilities for each Federal assistance program subject to this subpart A is the

annualized rate equal to the average equivalent yields of 13-week Treasury Bills auctioned during a State's fiscal year. We provide this rate to each State.

(c) A State must calculate and report interest liabilities on the basis of its fiscal year. A State must ensure that its interest calculations are auditable and retain a record of the calculations.

(d) As set forth in § 205.9, a Treasury-State agreement must include the method a State uses to calculate and document interest liabilities.

(e) A State may use actual data, a clearance pattern, or statistical sampling to calculate interest. A clearance pattern used to calculate interest must meet the standards of § 205.20. If a State uses statistical sampling to calculate interest, the State must sample transactions separately for each Federal assistance program subject to this subpart A. Each sample must be representative of the pool of transactions and be of sufficient size to accurately represent the flow of Federal funds under the Federal assistance program, including seasonal or other periodic variations.

(f) For the first year in which a Federal assistance program is covered in a Treasury-State agreement, funds transfers that occur prior to the first day of the State's fiscal year must not be included in interest calculations and are not subject to the interest liability provisions of this part.

§ 205.20 What is a clearance pattern?

States use clearance patterns to project when funds are paid out, given a known dollar amount and a known date of disbursement. A State must ensure that clearance patterns meet the following standards:

(a) A clearance pattern must be auditable.

(b) A clearance pattern must accurately represent the flow of Federal funds under the Federal assistance programs to which it is applied.

(c) A clearance pattern must include seasonal or other periodic variations in clearance activity.

(d) A clearance pattern must be based on at least three consecutive months of disbursement data, unless additional data is required to accurately represent the flow of Federal funds.

(e) If a State uses statistical sampling to develop a clearance pattern, the sample size must be sufficient to ensure a 96 percent confidence interval no more than plus or minus 0.25 weighted days above or below the estimated mean.

(f) A clearance pattern must extend, at a minimum, until 99 percent of the dollars in a disbursement have been paid out for Federal assistance program purposes.

(g) We and a State may agree to other procedures, such as estimates to project when funds are paid out when the dollar amount and/or the timing of disbursements are not known.

§ 205.21 When may clearance patterns be used?

(a) A State may develop a clearance pattern for:

(1) An individual Federal assistance program;

(2) A logical group of Federal assistance programs that have the same disbursement method and type of payee;

(3) A bank account;

(4) A specific type of payment, such as payroll or vendor payments; or

(5) Anything that is agreed upon by us and a State. If a clearance pattern is used for multiple Federal assistance programs, a State must apply the clearance pattern separately to each Federal assistance program when scheduling funds transfers or calculating interest.

(b) As set forth in § 205.9, a Treasury-State agreement must include the method a State uses to develop and maintain clearance patterns.

§ 205.22 How are accurate clearance patterns maintained?

(a) If a State has knowledge, at any time, that a clearance pattern no longer reflects a Federal assistance program's actual clearance activity, or if a Federal assistance program undergoes operational changes that may affect clearance activity, the State must notify us, develop a new clearance pattern, and certify that the new pattern corresponds to the Federal assistance program's clearance activity. Clearance patterns will remain in effect until a new clearance pattern is certified.

(b) An authorized State official must certify that a clearance pattern corresponds to the clearance activity of the Federal assistance program to which it is applied. An authorized State official must re-certify the accuracy of a clearance pattern at least every five years. If a State develops a clearance pattern for a bank account or a specific type of payment, or on another basis, as set forth in § 205.21, we may prescribe other requirements for re-certifying the accuracy of the clearance pattern. A State can begin to use a new clearance pattern on the date the new clearance pattern is certified.

§ 205.23 What requirements apply to estimates?

The following requirements apply when we and a State negotiate a mutually agreed upon funds transfer procedure based on an estimate of the State's immediate cash needs:

(a) The State must ensure that the estimate reasonably represents the flow of Federal funds under the Federal assistance program or program component to which the estimate applies. The estimate must take into account seasonal or other periodic variations in activity throughout the period for which the Federal funds are available.

(b) As set forth in §§ 205.9 and 205.10, a Treasury-State agreement must include the method a State uses to develop, maintain, and document the estimate.

§ 205.24 How are accurate estimates maintained?

(a) If a State has knowledge that an estimate does not reasonably correspond to the State's cash needs for a Federal assistance program or program component, or if a Federal assistance program undergoes operational changes that may affect cash needs, the State must immediately notify us in writing. We and the State will amend the funding technique provisions in the Treasury-State agreement or take other mutually agreed upon corrective action.

(b) When estimates are properly updated and applied, a State or Federal interest liability may or may not accrue, depending on the terms of the Treasury-State agreement.

(c) We may require a State to justify in writing that it is not feasible to use a more efficient basis for determining the amount of funds to be transferred under the Federal assistance program or program component to which an estimate is applied. We may prescribe requirements for certifying the reasonableness of an estimate.

§ 205.25 How does this part apply to certain Federal assistance programs or funds?

(a) Special rules apply to certain Federal assistance programs or funds described in this section. To the extent the provisions of this section are inconsistent with other provisions of this part, this section applies.

(b) A State's interest liability on funds withdrawn from its account in the UTF equals the actual interest earned on such funds less the related banking costs. Actual interest earned does not include non-cash bank earnings. If funds withdrawn from the State account in the UTF are commingled with other funds, a proportionate share of interest earnings and banking costs must be allocated to the funds withdrawn from the State account. Interest liabilities on funds withdrawn from a Federal

account in the UTF, except the Federal Unemployment Account, are calculated in accordance with § 205.19.

(c) *Supplemental Security Income.* (1) Except as provided in 42 U.S.C. 1382e(d), the Federal government incurs an interest liability from the day State funds are credited to the Federal government's account to the day a Federal Program Agency pays out the State funds for Federal assistance program purposes. A State incurs an interest liability from the day a Federal Program Agency pays out Federal funds for Federal assistance program purposes to the day State funds are credited to the Federal government's account.

(2) Interest liability must be calculated on the difference between a State's monthly Supplemental Security Income payment and the State's actual liability for the month.

(3) The Federal government will not incur interest liabilities on refunds of State funds under the Supplemental Security Income Program.

(4) Administrative fees charged by the Social Security Administration to States under the Supplemental Security Income program are not subject to this part.

(5) Supplemental State payments made in conjunction with Supplemental Security Income are not subject to this part.

(d) *Funds collected under the Child Support Enforcement Program.* (1) Funds collected by States from absent parents pursuant to Title IV–D of the Social Security Act are not subject to this part.

(2) Interest earned by States on undistributed collections must be treated as Federal assistance program income under 45 CFR 304.50(b) and is not subject to this part.

(3) Late payment fees collected by States from absent parents are not subject to interest liabilities under this part and are not subject to this part. However, such fees must be treated as Federal assistance program income in accordance with 45 CFR 302.75(b)(6).

(e) A State that earns interest on Special Supplemental Food Program for Women, Infants, and Children rebates is not subject to interest liability if the funds earned are used for Federal assistance program purposes.

(f) *Revolving Loan Funds.* (1) This part applies to any transfer of funds from the Federal Program Agency to the State for the Revolving Loan Fund.

(2) This part does not apply to interest a State earns on Revolving Loan Funds when Federal Program Agency regulations require that all interest earned on invested funds be used for Federal assistance program purposes.

§ 205.26 What are the requirements for preparing Annual Reports?

(a) A State must submit to us an Annual Report accounting for State and Federal interest liabilities of the State's most recently completed fiscal year. Adjustments to the Annual Report must be limited to the two State fiscal years prior to the State fiscal year covered by the report. The authorized State official must certify the accuracy of a State's Annual Report. A signed original of the Annual Report must be received by December 31 of the year in which the State's fiscal year ends. We will provide copies of Annual Reports to Federal agencies. We will prescribe the format of the Annual Report, and may prescribe that the Annual Report be submitted by electronic means.

(b) A State must submit a description and supporting documentation for liability claims greater than $5,000. This information must include the following:

(1) The amount of funds requested;

(2) The date the funds were requested;

(3) The date the funds were paid out for Federal assistance program purposes;

(4) The date the funds were received by the State; and

(5) The date of award.

(c) A State claiming reimbursement of Interest Calculation Costs must submit its claim with its Annual Report in accordance with § 205.27. An authorized State official must certify the accuracy of a State's claim for Interest Calculation Costs.

§ 205.27 How are Interest Calculation Costs calculated?

(a) We will compensate a State annually for the costs of calculating interest, including the cost of developing and maintaining clearance patterns in support of interest calculations, pursuant to this subpart A, subject to the conditions and limitations of this section.

(b) We may deny an interest calculation cost claim if a State does not:

(1) Have a Treasury-State agreement with us, as set forth in §§ 205.6 through 205.9;

(2) Submit timely a Treasury-State agreement, as set forth in §§ 205.6 through 205.9;

(3) Submit timely an updated list of Federal assistance programs subject to this subpart A, as set forth in §§ 205.6 through 205.9;

(4) Submit timely a claim for Interest Calculation Costs with its Annual Report, as set forth in § 205.26; or

(5) Submit timely its Annual Report, as set forth in § 205.26.

(c) A State must maintain documentation to substantiate its claim for Interest Calculation Costs. We may require a State to provide documentation to support its interest calculation cost claims. We will review all interest calculation cost claims for reasonableness. If we determine that a cost claim is unreasonable, we will not reimburse a State for that cost, notwithstanding any other provision of this section.

(d) *Eligibility and treatment of Interest Calculation Costs.* (1) Interest Calculation Costs do not include expenses for normal disbursing services, such as processing checks or maintaining records for accounting and reconciliation of cash accounts, or expenses for upgrading or modernizing accounting systems.

(2) Interest Calculation Costs in excess of $50,000 in any year are not eligible for reimbursement, unless a State can justify to us that the State is unable to develop and maintain clearance patterns in support of interest calculations, or perform the actual calculation of interest, without incurring such costs. Supporting documentation must accompany State requests for reimbursement in excess of $50,000.

(3) Interest Calculation Costs that a State incurs in fiscal years prior to its most recently completed Annual Report are not eligible for reimbursement.

(4) A State must not include Interest Calculation Costs in its Statewide cost allocation plan, as defined and provided for in OMB Circular A–87. All costs incurred by a State to implement this subpart A, other than Interest Calculation Costs, are subject to the procedures and principles of OMB Circular A–87.

(e) The payments from the Federal government to individual States to offset Interest Calculation Costs incurred are funded from the aggregate interest payments States make to the Federal government. The following limitations apply:

(1) We will not reduce or adjust interest liabilities for Federal assistance programs funded out of trust funds for which the Secretary is trustee. These programs include, but are not limited to, Unemployment Insurance Trust Fund (CFDA 17.225); Highway & Planning Trust Fund (CFDA 20.205); Airport Improvement Trust Fund (CFDA 20.106); Federal Transit Capital Improvement Trust Fund (CFDA 20.500); Federal Transit Capital & Operating Assistance Trust Fund (CFDA 20.507); and Social Security—Disability Insurance Trust Fund (CFDA 96.001); and

(2) The aggregate payments from the Federal government to States to offset Interest Calculation Costs will not be

greater than the aggregate interest payments States make to the Federal government.

§ 205.28 How are interest payments exchanged?

(a) We offset the adjusted total State interest liability and the adjusted total Federal interest liability for each State to determine the net interest payable to or from each specific State. The payment of net interest and any Interest Calculation Costs, as set forth in § 205.27, for the most recently completed fiscal year must occur no later than March 31. We will notify a State of the final net interest liability. A State must submit a claim to receive payment.

(b) A State may appeal a decision by us on interest liabilities and interest calculation cost claims in accordance with § 205.31.

(c) If a State appeals the amount of interest payable in accordance with the provisions of § 205.31, payment must occur by March 31 for any portions not subject to the appeal.

(d) The Federal government will not be liable for interest on any payment of interest to a State.

§ 205.29 What are the State oversight and compliance responsibilities?

(a) A State must designate an official representative with the statutory or administrative authority to coordinate all interaction with the Federal government concerning this subpart A, and must notify us in writing of the representative's name and title. A State must notify us immediately of any change in the official representative.

(b) A State must maintain records supporting interest calculations, clearance patterns, Interest Calculation Costs, and other functions directly pertinent to the implementation and administration of this subpart A for audit purposes. A State must retain the records for each fiscal year for three years from the date the State submits its Annual Report, or until any pending dispute or action involving the records and documents is completed, whichever is later. We, the Comptroller General, and the Inspector General or other representative of a Federal Program Agency must have the right of access to, and may require submission of, all records for the purpose of verifying interest calculations, clearance patterns, interest calculation cost claims, and the State's accounting for Federal funds.

(c) A State's implementation of this subpart A is subject to audit in accordance with 31 U.S.C. Chapter 75, ''Requirements for Single Audits.''

(d) If a State repeatedly or deliberately fails to request funds in accordance with the procedures established for its funding techniques, as set forth in § 205.11, § 205.12, or a Treasury-State agreement, we may deny the State payment or credit for the resulting Federal interest liability, notwithstanding any other provision of this part.

(e) If a State materially fails to comply with this subpart A, we may, in addition to the action described in paragraph (d) of this section, take one or more of the following actions, as appropriate under the circumstances:

(1) Deny the reimbursement of all or a part of the State's interest calculation cost claim;

(2) Send notification of the non-compliance to the affected Federal Program Agency for appropriate action, including, where appropriate, a determination regarding the impact of non-compliance on program funding;

(3) Request a Federal Program Agency or the General Accounting Office to conduct an audit of the State to determine interest owed to the Federal government, and to implement procedures to recover such interest;

(4) Initiate a debt collection process to recover claims owed to the United States; or

(5) Take other remedies legally available.

§ 205.30 What are the Federal oversight and compliance responsibilities?

(a) A Federal Program Agency must designate an official representative to coordinate all interaction with us and the States concerning this subpart A, and must notify us in writing of the representative's name and title. A Federal Program Agency must notify us immediately of any change in the official representative.

(b) A Federal Program Agency's implementation of this subpart A is subject to review pursuant to procedural instructions that we issue.

(c) We will consult with Federal agencies as necessary and appropriate before entering into or amending a Treasury-State agreement.

(d) We will distribute Annual Reports to Federal agencies, as set forth in § 205.26. Upon our request, a Federal Program Agency must review a State's Annual Report for reasonableness and must report its findings to us within 30 days.

(e) A Federal Program Agency must notify us in writing if the program agency has knowledge, at any time, that:

(1) A State's clearance pattern does not correspond to a Federal assistance program's clearance activity; or

(2) Corrective action needs to be taken by a State, us, or another Federal Program Agency, with respect to the implementation of this subpart. We will notify the State or Federal Program Agency as appropriate in writing with a description of the Federal Program Agency's assertion.

(f) A Federal Program Agency must notify us in writing of new Federal assistance programs listed in the Catalog of Federal Domestic Assistance.

(g) If a Federal Program Agency causes an interest liability by failing to comply with this subpart A, we may collect a charge from the Federal Program Agency. A Federal interest liability resulting from circumstances beyond the control of a Federal Program Agency does not constitute noncompliance. We will determine the charge using the following procedures:

(1) We will issue a Notice of Assessment to the Federal Program Agency, indicating the nature of the noncompliance, the amount of the charge, the manner in which it was calculated, and the right to file an appeal.

(2) To the maximum extent practicable, a Federal Program Agency must pay a charge for noncompliance out of appropriations available for the Federal Program Agency's operations and not from the Federal Program Agency's program funds.

(3) If a Federal Program Agency does not pay a charge for noncompliance within 45 days after receiving a Notice of Assessment, we will debit the appropriate Federal Program Agency account.

(4) In the event a Federal Program Agency appeals a charge imposed under the Notice of Assessment, we will defer the charge until we decide the appeal. If we deny the appeal, the effective date of the charge may be retroactive to the date indicated in the Notice of Assessment.

§ 205.31 How does a State or Federal Program Agency appeal a determination made by us and resolve disputes?

(a) This section documents the procedures for:

(1) A State to appeal the net interest charge that we have assessed;

(2) A State to appeal a determination we have made regarding the State's claim for Interest Calculation Costs in accordance with § 205.27;

(3) A Federal Program Agency to appeal a charge for noncompliance that we have assessed in accordance with § 205.30; or

(4) A State or a Federal Program Agency to resolve other disputes with us or between or among each other concerning the implementation of this subpart A.

(b) A State or Federal Program Agency must submit a written petition (Petition) to the Assistant Commissioner, Federal Finance, Financial Management Service, (Assistant Commissioner), within 90 days of the date of the notice of assessment or the event that initiated the appeal or dispute. The Petition must include a concise factual statement, not to exceed 15 pages, with supporting documentation in the appendices, of the conditions forming the basis of the Petition and the action requested of the Assistant Commissioner. In the case of a dispute, the party submitting the petition to us must concurrently provide a copy of the petition to the other concerned parties. The other concerned parties may submit to the Assistant Commissioner a rebuttal within 90 days of the date of the petition. The rebuttal must include a concise factual statement, not to exceed 15 pages, with supporting documentation in the appendices.

(c) The Assistant Commissioner will review the Petition, any rebuttal, and all supporting documentation. As part of the review process, the Assistant Commissioner may request to meet with any or all parties and may request additional information.

(d) The Assistant Commissioner will issue a written decision within the later of 120 days of the date of the Petition or the rebuttal, in case of a dispute, or 120 days from receipt of any additional information. The Assistant Commissioner's decision will be the final program agency action on our part for purposes of judicial review procedures under the Administrative Procedures Act, 5 U.S.C. 701–706 (APA), unless either the State or Federal Program Agency invokes the provisions of the Administrative Dispute Resolution Act of 1990 (ADRA), 5 U.S.C. 581–593.

(e) Either a State or Federal Program Agency may seek to invoke the provisions of the ADRA within 45 days after the date of the Assistant Commissioner's written decision.

(1) The party invoking the ADRA must notify the Assistant Commissioner and any other concerned parties in writing. If all parties, including the Assistant Commissioner, agree in writing, a neutral party appointed under the provisions of the ADRA may assist in resolving the dispute through the use of alternate means of dispute resolution as defined in the ADRA.

(2) If the party invoking the ADRA is unable to reach a satisfactory resolution, the Assistant Commissioner's decision will be the final agency action on our part for purposes of the judicial review procedures under the APA.

(f) Any amount due as a result of an appeal or dispute must be paid within 30 days of the date of the decision of the Assistant Commissioner or the date of the resolution under the ADRA. If a State fails to pay, the State will be subject to collection techniques under 31 U.S.C. 3701 *et seq.*, including accrual of interest on outstanding balances and administrative offset.

Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement

§ 205.32 What Federal assistance programs are subject to this subpart B?

This subpart B applies to all Federal assistance programs listed in the Catalog of Federal Domestic Assistance that are not subject to subpart A of this part.

§ 205.33 How are funds transfers processed?

(a) A State must minimize the time between the drawdown of Federal funds from the Federal government and their disbursement for Federal program purposes. A Federal Program Agency must limit a funds transfer to a State to the minimum amounts needed by the State and must time the disbursement to be in accord with the actual, immediate cash requirements of the State in carrying out a Federal assistance program or project. The timing and amount of funds transfers must be as close as is administratively feasible to a State's actual cash outlay for direct program costs and the proportionate share of any allowable indirect costs. States should exercise sound cash management in funds transfers to subgrantees in accordance with OMB Circular A–102 (For availability, see 5 CFR 1310.3.).

(b) Neither a State nor the Federal government will incur an interest liability under this part on the transfer of funds for a Federal assistance program subject to this subpart B.

§ 205.34 What are the Federal oversight and compliance responsibilities?

(a) A Federal Program Agency must review the practices of States as necessary to ensure compliance with this subpart B.

(b) A Federal Program Agency must notify us if a State demonstrates an unwillingness or inability to comply with this subpart B.

(c) A Federal Program Agency must formulate procedural instructions specifying the methods for carrying out the responsibilities of this section.

§ 205.35 What is the result of Federal Program Agency or State non-compliance?

We may require a State and a Federal Program Agency to make the affected Federal assistance programs subject to subpart A of this part, consistent with Federal assistance program purposes and regulations, notwithstanding any other provision of this part, if:

(a) A State demonstrates an unwillingness or inability to comply with this subpart B; or

(b) A Federal Program Agency demonstrates an unwillingness or inability to make Federal funds available to a State as needed to carry out a Federal assistance program.

Subpart C—[Reserved]

Richard L. Gregg,

Commissioner.

[FR Doc. 02–11540 Filed 5–9–02; 8:45 am]

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Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 930

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order No. 930; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket Nos. AO–370–A7; FV00–930–1]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the marketing agreement and order for tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, and provides growers and processors with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on those proposed by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. The amendments include making districts producing more than 6 million pounds per year subject to volume regulations (rather than 15 million pounds); making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; changing provisions related to alternate Board members serving for absent members at Board meetings; making all processed cherries subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products. Remaining amendments pertain to allocation of Board membership; clarification of order provisions relating to exemption and diversion; release of cherries in the inventory reserve; and the use of crop estimates other than the official USDA crop estimate in developing the Board's marketing policy. The proposed amendments are intended to improve the operation and functioning of the tart cherry marketing order program.

DATES: The referendum will be conducted from May 20 to 31, 2002. The representative period for the purpose of the referendum is June 1, 2000, through May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491; Fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on March 17, 2000, and published in the March 23, 2000, issue of the **Federal Register** (65 FR 15580); Recommended Decision and Opportunity to File Written Exceptions issued on January 15, 2002, and published in the January 24, 2002, issue of the **Federal Register** (67 FR 3540).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments were formulated based on the record of a public hearing held in Rochester, New York on March 27 and 28, 2000; in Grand Rapids, Michigan on March 29, 30, and 31, 2000; in Kennewick, Washington on April 4 and 5, 2000; and in Salt Lake City, Utah on April 6, 2000. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 930, regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to collectively as the ''order.'' The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The notice of hearing contained numerous proposals submitted by the Board, and one proposed by the Agricultural Marketing Service (AMS).

The Board's proposed amendments included making all districts subject to volume regulations, rather than only those districts producing more than 15 million pounds per year; making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; changing provisions related to alternate Board members serving for absent members at Board meetings; making all cherry shipments subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products. Other amendments proposed by the Board pertained to allocation of Board membership; clarification of order provisions relating to exemption and diversion; release of cherries in the inventory reserve; and the use of crop estimates other than the official USDA crop estimate in developing the Board's marketing policy.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, if any of the proposed amendments are adopted, so that all of the order's provisions conform with the effectuated amendments.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on January 15, 2002, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by February 13, 2002.

Ninety-six exceptions were filed during the period provided. Growers and processors in the production area submitted almost all of the comments. Comments were also filed by the Board, the Wisconsin Department of Agriculture, and Congressman Mark Green of Wisconsin.

All of the comments addressed the issue of whether to reduce the production threshold level for districts to be subject to volume regulation. Fourteen supported retaining the current 15 million pound threshold; 17 favored reducing the threshold to 6 million pounds (as proposed by USDA in the recommended decision); and 65 wanted the threshold to be eliminated (as proposed by the Board). Growers and processors in the regulated States tended to support the Board's proposal, while those in unregulated States favored retaining a threshold production level. The exception was Wisconsin. Twenty-two of the 28 comments originating in that State supported eliminating the threshold, but not lowering it.

Only four of the exceptions addressed other material issues included in the recommended decision. The specific issues raised in all of the exceptions are discussed in the Findings and Conclusions section of this document.

In addition to the 96 timely exceptions, 4 comments were received after the comment period ended. No substantive issues were raised by these commenters that were not already known to the Department or raised by those who filed in a timely manner.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that these amendments could result in additional regulatory requirements being imposed on some tart cherry handlers, while regulatory burdens on other handlers could be reduced. Overall benefits are expected to exceed costs.

The record indicates that there are about 40 handlers regulated under Marketing Order No. 930. In addition, there are about 905 producers of tart cherries in the production area.

The record indicates that of the 41 tart cherry handlers operating during the 1999–2000 season, 7 had processed tonnage of more than 10 million pounds (or 17 percent of all handlers); 8 had between 5.1 and 10 million pounds (20 percent); 12 had between 2.1 and 5 million pounds (29 percent); and the remaining 14 had less than 2 million pounds of processed tonnage (34 percent). Handlers accounting for 10 million pounds or more would be classified as large businesses. Thus, a majority of tart cherry handlers could be classified as small entities.

Twenty handlers are located in Michigan—nine in district 1 (Northern Michigan), eight in district 2 (Central Michigan) and three in district 3 (Southern Michigan). Of the remaining 21 handlers, 4 are in district 4 (New York), 3 are in district 5 (Oregon), 1 is in district 5 (Pennsylvania), 3 are in district 7 (Utah), 5 are in district 8 (Washington), and 5 are in district 9 (Wisconsin). Many handlers process cherries grown in more than one district.

Of the 904 growers who produced cherries in 1999, 368 were in Northern Michigan (41 percent), 149 were in Southern Michigan (16 percent), 129 percent in Central Michigan (14 percent), 84 in New York (9 percent), 65 in Wisconsin (7 percent), 38 in Utah (4 percent), 29 in Pennsylvania (3 percent), 27 in Oregon (3 percent), and 17 in Washington (2 percent).

During the 3-year period 1999–2001, production of tart cherries averaged 300.6 million pounds. By district, Northern Michigan accounted for 44.0 percent of the production, followed by Central Michigan with 22.4 percent, Southern Michigan with 8.7 percent, Utah and Washington each with 6.6 percent, New York with 5.3 percent, Wisconsin with 3.4 percent, Pennsylvania with 1.7 percent, and Oregon with 1.3 percent.

Dividing total production by the number of growers, the average grower produces about 332,500 pounds of cherries annually. With grower returns of about 20 cents per pound, average revenues would be $66,500. Thus, it is reasonable to conclude that most tart cherry growers are small entities.

At 20 cents per pound, a grower would have to produce 2.5 million pounds of cherries to reach the $500,000 receipt threshold to qualify as a large producing entity under the SBA's definition that was in effect at the time of the hearing. The evidence of record is that only 13 growers (or less than 2 percent of the total number of growers) produced 2.5 million pounds or more during the 1999–2000 crop year. Five of those growers (or 38 percent) were located in Northern Michigan (district 1) and three operated (23 percent) in Central Michigan (district 2). The remaining five growers in this category (38 percent) were distributed among the remaining seven districts. The distribution of large growers is thus in proportion to the overall distribution of growers among the districts.

A large majority (more than 98 percent) of the tart cherry growers falls into the previous SBA definition of a small entity (annual receipts of less than $500,000); it is reasonable to assume that an even greater majority qualify under the current SBA definition of a small grower (annual receipts of less than $750,000).

During the 3 years 1999 to 2001, the average grower accounted for about 333,000 pounds of cherries. By district, average grower size varies considerably. The average grower in Washington accounts for roughly 1,159,000 pounds of cherries. Next in size is Central Michigan with 530,000 pounds, followed by Utah (518,000 pounds), Northern Michigan (360,000 pounds), New York (191,000 pounds), Pennsylvania (179,000 pounds), Southern Michigan (177,000 pounds), Wisconsin (155,000 pounds) and Oregon (141,000 pounds).

This decision proposes that the order be amended: (1) To provide that all districts in the production area with annual production in excess of 6 million pounds be subject to volume regulation rather than only those with annual production in excess of 15 million pounds; (2) To allocate Board membership among districts based on levels of production and make a corresponding change in quorum requirements; (3) To authorize a Board member to designate any alternate to serve for that member at a Board meeting in the event the member and his or her alternate are unavailable; (4) To clarify the diversion and exemption provisions of the order by eliminating cross references among those provisions and adding general rulemaking authority to implement handler diversion provisions; (5) To add specific authority to the order to exempt or provide diversion credit for cherries exported to designated markets; (6) To provide diversion credit for shipments of cherry juice and juice concentrate to established diversion markets; (7) To add specific authority for the transfer of diversion credits among handlers; (8) To provide that grower diversions that take place in districts that are subsequently exempt from volume regulation qualify for diversion credit; (9) To allow cherries in the inventory reserve to be released for use in only certain designated markets; (10) To specify that the 10-percent reserve release for market expansion only applies during years when volume regulations are in effect; (11) To require assessments to be paid on all cherries handled, except for those that are diverted by destruction at a handler's facility and those covered by a grower diversion certificate; (12) To eliminate the requirement that differential assessment rates be established for various cherry products based on the relative market values of such products; and (13) To allow the Board to use an estimate other than the official USDA crop estimate in developing its marketing policy.

Industry Background

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned,

juiced, and pureed. During the period 1995–96 through 1999–00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987–88 through 1997–98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999–00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999–00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

In crop years 1987–88 through 1999–00, tart cherry production ranged from a high of 396.0 million pounds in 1995–96 to a low of 189.9 million pounds in 1991–92. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during the 1993–1995 seasons.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since most tart cherries are either canned or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries are rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is oversupplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production volume and carry-in inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry would result in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be oversupplied, resulting in low grower prices.

Recent grower prices have been as high as $0.20 per pound. At current production levels, the cost of production is reported to be $0.20 to $0.22 per pound. Thus, the estimated $0.20 per pound received by growers is close to the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to continue to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of oversupplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products.

The free and restricted percentages established under the order release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from operation of the marketing order

program are difficult to quantify, the stabilizing effects of volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

Districts Subject to Volume Regulation

The order currently covers cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. For purposes of regulation and allocation of Board membership, the seven-State production area is divided into nine districts. Michigan, the largest producing State, is divided into three districts—Northern Michigan, Central Michigan, and Southern Michigan. Each of the other States constitutes a single district.

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. Volume regulations are implemented through the establishment of free and restricted percentages that are recommended by the Board and implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. ''Free market tonnage percentage'' cherries may be marketed in any outlet. ''Restricted percentage'' cherries must be withheld from the primary market. This can be accomplished by either placing the cherries into handlers' inventory reserves or by diverting them. Cherries may be diverted by leaving them unharvested in the orchard or by destruction at the processing plant; or by using them in secondary markets. These secondary markets include exports (except to Canada or Mexico), new products, new market development, experimental purposes, and charitable contributions. Shipments of restricted percentage cherries to these specified markets receive diversion credits which handlers use to fulfill their restricted obligation.

Section 930.52 of the order provides that volume regulations only apply to cherries grown in districts in which average annual production of cherries over the prior 3 years has exceeded 15 million pounds. Additionally, paragraph (d) of § 930.52 provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years would be exempt from any volume regulation in the year of the short crop.

The Board proposed eliminating the 15-million pound threshold, and subjecting all 9 districts to volume regulation. No proposal was made to change the provision of § 930.52(d).

Most witnesses at the hearing addressed this issue. Growers and processors in Michigan, Utah and Wisconsin testified in support of the Board's proposal. Opposition was primarily from growers and handlers in Pennsylvania and Oregon. Some growers and processors in New York and Washington testified in support of the Board's proposal, while others were opposed to a change in the 15-million pound threshold.

The record shows that production levels in the nine districts vary considerably, with Northern Michigan consistently producing the largest volume of tart cherries, and Oregon the least. The following table shows tart cherry production by district for the 5 years 1997 through 2001 (all figures are in million pound units). The data for the first 3 years (1997 through 1999) were introduced on the hearing record. The statistics for 2000 and 2001 became available subsequent to the hearing and may be found in reports compiled by the Board and retained by the Department.

District	1997	1998	1999	2000	2001
No. Michigan	140.7	187.8	107.7	107.5	182.0
Central Mich.	68.7	58.2	47.2	70.8	84.0
So. Michigan	14.4	17.4	28.6	20.3	30.1
New York	13.3	13.1	16.9	16.5	14.6
Oregon	2.4	2.2	5.1	4.0	2.2
Pennsylvania	5.6	4.0	6.9	5.3	3.5
Utah	17.5	32.5	14.5	32.5	12.0
Washington	11.8	13.7	16.6	17.4	25.2
Wisconsin	11.2	14.7	7.9	9.7	12.7
Total	285.4	343.6	251.4	284.0	366.3

Using the above figures, the following 3-year averages (used to determine which districts are subject to volume regulation) were computed.

District	Average 1997–99	Average 1998–00	Average 1999–01
No. Michigan	145.4	134.3	132.4
Central Mich.	58.0	58.7	67.3
So. Michigan	20.1	22.1	26.3
New York	14.4	15.5	16.0
Oregon	3.2	3.8	3.8
Pennsylvania	5.5	5.4	5.2
Utah	21.4	26.5	19.7
Washington	14.0	15.9	19.7
Wisconsin	11.3	10.8	10.1
Total	293.5	293.0	300.6

The above table shows that for each of the 3-year periods, the three Michigan districts and Utah consistently exceeded the 15-million pound threshold. Production in Oregon, Pennsylvania and Wisconsin was below the threshold in all periods, while New York and Washington each exceeded the 15-

million pound threshold in two out of three of the periods.

The order became effective in 1996, based on a series of hearings that began in December 1993 and ended in January 1995. Proponents of the order supported the 15-million pound threshold as a criterion for determining which districts would be subject to volume regulation. At the time the order was implemented, the three Michigan districts, New York and Utah had average annual production in excess of 15 million pounds. These five districts accounted for 92 percent of U.S. production in 1995, and 89 percent of U.S. production in 1996.

Proponents of the order also supported a provision that a district not meeting the 15-million pound threshold would become covered by regulation when it reached a production level equal to 150 percent of its average annual production during the period 1989 through 1992. The purpose of this provision was to catch surges in production that occasionally occur in order to more equitably distribute the burden of supply control. It was also to make sure that when smaller producing districts expand production capacity, they do not take advantage of the system and become free riders. This was intended to prevent a district from benefitting from the program without contributing to the effort to reduce surplus supplies.

After considering the record evidence in support of this provision, the Department decided not to include it in the order. The provision, as proposed, seemed to be overly complicated to administer and would possibly be inequitable to tart cherry growers and handlers. In addition, proponents indicated that it was not their intent to regulate States with small production volumes since their aggregate volume is not a critical amount when compared to the total volume of tart cherries produced.

Several witnesses at the amendatory hearing suggested that, had the 150 percent rule been incorporated into the initial order, the amendment to eliminate the 15-million pound threshold would now be unnecessary.

The following table shows production in the initially unregulated districts during the period 1989 through 1992.

	1989	1990	1991	1992	Average	150%
Pennsylvania	6.0	3.5	11.5	6.0	6.7	10.0
Wisconsin	7.6	4.8	7.8	9.1	7.3	10.9
Oregon	15.0	7.5	7.5	9.5	9.9	14.8
Washington	6.4	7.4	9.8	12.8	9.1	13.6

The record shows that neither Pennsylvania nor Oregon has reached a level of production equal to 150 percent of their production during this base period. Wisconsin first exceeded production of 10.9 million pounds (150 percent of its average annual production in the base period) in 1997, and Washington exceeded production of 13.6 million pounds (150 percent of its production during the base period) in 1998.

If the order were implemented as proposed by the proponents during the promulgation, all districts but Pennsylvania and Oregon would currently be regulated. As it is, for the 2001 season, Wisconsin is also unregulated. In the 1999 crop year, Pennsylvania and Oregon together accounted for 4.9 percent of the U.S. tart cherry crop. In 2000, they accounted for 3.3 percent of the total, and in 2001, only 1.6 percent. Adding production in Wisconsin during those years brings the percentages in the 3 years 1999 to 2001 to 8 percent, 7 percent and 5 percent respectively.

With respect to New York, witnesses concurred that with the 15-million pound threshold, that district would likely be subject to regulation only about 50 percent of the time in the future. That is because production in that State is close to the threshold, ranging from 13.1 to 16.9 million pounds over the last 5 seasons. Concern was also expressed that Utah could fall below the established threshold in upcoming years and become unregulated. Washington was expected to continue to increase its production and become subject to regulation in the near future. (Washington did exceed the threshold during the period 1998–2000, and will be subject to any volume regulation implemented for the 2001 crop). Witnesses agreed that production in Oregon, Pennsylvania and Wisconsin was likely to remain below 15 million pounds.

The conclusion by proponents of the Board's proposal was that with the order as currently written, a greater proportion of U.S. production could become unregulated. This would dilute the effectiveness of the program and, more important, increase the amount of regulation imposed on the remaining regulated districts.

Since the order became operational, volume regulations have been implemented for three crop years—1997, 1998, and 2000. A volume regulation has also been recommended for the 2001 crop, but not yet effectuated. No regulation was deemed necessary for the 1999 crop. The following table shows the level of regulation implemented (or, in the case of 2001, recommended) in 1997, 1998, 2000 and 2001. With the exception of the restricted percentages, all figures are in million pound units.

	1997	1998	2000	2001
U.S. Crop	285.0	344.0	284.0	366.3
Carry-in	70.0	38.8	87.0	39.0
Total Available Supply	355.0	382.8	371.0	405.3
3-Year Average Sales	269.9	288.6	277.0	217.0
Target Carry-out	0.0	0.0	0.0	0.0
Economic Adjustment	(23.0)	(31.4)	(22.0)	50.0
Optimum Supply	246.9	257.2	257.0	267.0
Surplus	108.1	125.6	116.0	138.3
Production in Regulated Districts	240.0	309.0	232.0	335.9
Restricted Percentage	45	41	50	41

If all districts had been subject to regulation, the surplus would have been divided by total production rather than by production in the regulated districts. Had this been done, the restricted percentage in 1997 would have been 38 percent rather than 45 percent; the restricted percentage in 1998 would have been 37 percent rather than 41 percent; the restricted percentage in 2000 would have been 41 percent rather than 50 percent; and the restricted percentage recommended for 2001 would have been 39 percent instead of 41 percent. The difference is relatively small for the 2001 crop year because production in Utah (12 million pounds) was less than 50 percent of its prior 5-year average, so that district will be unregulated in the 2001 crop year.

One of the primary arguments made by supporters of the Board's proposed amendment was that of fairness. These witnesses stated that all tart cherry growers benefit from the operation of the order, but the burden of regulation is borne only by those in the regulated districts. They testified that revenues received by growers of similar size varied considerably due solely to where a particular grower's farm was located. They concluded that no growers in the regulated districts receive gross returns equal to those received in non-regulated districts.

To illustrate, an agricultural economist from Michigan State University (who was a witness testifying in support of the Board's amendment) presented an analysis of the economic impacts of the program on growers in regulated versus non-regulated districts. This analysis compared gross farm income for growers of the same size in regulated and non-regulated districts. It assumed a grower who produces 200 tons on 40 acres, or 10,000 pounds per acre. Estimates of likely returns for the 1998 crop were used.

For purposes of this analysis, it was assumed that the grower in the non-regulated district could sell all of his or her production in primary market outlets. In the case of the grower in the regulated district, it was assumed that his or her crop utilization would be allocated in accordance with the overall industry averages in 1998. For example, about 3 percent of the tonnage would be placed in the inventory reserve, 11 percent would be exported, and 13 percent would be diverted through non-harvest.

Prices for free market cherries were USDA estimates of 14 cents per pound for the regulated districts and 13.5 cents per pound for the non-regulated districts.

Returns for market growth factor cherries were expected to be somewhat lower (12 cents per pound) because these cherries tend to be sold later in the year, or perhaps in a subsequent year. A conservative figure of 6 cents per pound was used for reserve cherries because of the many uncertainties as to what those cherries might return (for example, the timing of their release and prevailing prices that might exist). Export sales were estimated by industry leaders to average about 9 cents per pound in 1998. For new product development, an estimate of 11 cents per pound was used, taking into account the considerable variation of returns for new cherry products depending upon the processor and the circumstances surrounding the new products. For non-harvested cherries, a savings of 3 cents per pound in variable costs (e.g., harvesting and trucking) was used. Finally, no return was recorded for cherries diverted through at-plant diversions.

The income for a grower in a regulated district, based on the analysis of the witness, is shown below:

	Lbs.	%	Price	Income
Open Market	240,000	60	$0.14	$33,600
Market Growth	36,000	9	0.12	4,320
Inventory Reserve	12,000	3	0.06	720
Exports	44,000	11	0.09	3,960
New Products	8,000	2	0.11	880
Non-Harvest	52,000	13	0.03	1,560
At-Plant Diversion	8,000	2	0.00	0
Total Production	400,000	100	.....	45,040

For a grower in a non-regulated district, income was estimated as follows:

Open Market	400,000	100	$0.135	$54,000

In summary, the grower in the non-regulated district would receive revenues of $54,000, about 20 percent more than the grower in the regulated district. Both growers would benefit from any strengthening of prices through the use of volume regulations.

Opposition to the Board's proposal was expressed primarily by industry members in unregulated districts. One of the arguments made was that growers in these districts would be much more severely impacted by a volume regulation because yields in those districts are so low compared to those in regulated districts.

One witness used the analysis given above, but used different yields per acre. For the grower in a regulated district, he used 40 acres with a yield of 7,400 pounds per acre. This resulted in total production for that grower of 296,000 pounds and revenues of about $33,330. For the grower in a non-regulated district, he again used 40 acres, but used a yield of 2,400 pounds per acre. This provided total production of 96,000 pounds and revenues of only $2,960. Had the second grower been subject to volume regulation, his or her revenues would have been even lower.

The following table shows yields per acre in the States covered by the order for the years 1997 through 2000. The annual yields are from USDA statistics, while the average yield for Washington for the 4-year period was obtained from a processor survey in that State. All figures are in pounds per acre.

State	1997	1998	1999	2000	Average
Utah	6,250	11,790	5,360	11,800	8,800
Michigan	7,920	9,260	6,580	7,020	7,695
New York	5,580	5,380	6,850	7,550	6,340

State	1997	1998	1999	2000	Average
Pennsylvania	5,420	3,500	6,000	5,080	5,000
Wisconsin	4,670	6,580	4,350	4,350	4,988
Oregon	2,850	2,150	4,080	3,380	3,115
Washington	NA	NA	NA	NA	14,000

The above table shows that average yields do vary among the cherry producing States. It also shows that yields within the States vary considerably from year to year.

A witness supporting the Board's proposal stated that the use of average yields for an entire State is misleading. Michigan, for example, has a 4-year average yield of about 7,600 pounds per acre. The average yields for the three districts that comprise Michigan are quite different. In Northern Michigan, yields averaged about 13,000 pounds per acre, while in Central Michigan they averaged 5,000 pounds per acre and in Southern Michigan only 4,000 pounds per acre.

This witness further went on to state that variations in yields within a geographic district exceed the variations among the districts. He gave a personal example. The witness is a processor in Central Michigan. His organization deals with about 20 growers. Yields for those growers in 1998 ranged from 1,000 to 15,000 pounds per acre.

Therefore, it is reasonable to assume that the State in which a grower farms is not necessarily a good indicator of an individual grower's potential yield per acre. While weather conditions affect yields (e.g., susceptibility to freezes), weather conditions can vary as much within a district as between districts. Also, there are many other variables that contribute to a grower's yield per acre. These include the density of trees planted per acre, the age of the trees, and cultural practices undertaken by individual growers to care for their orchards. However, the table showing yields per acre does indicate that there is a definite difference in yields among the various States.

Regarding the age of trees, the record indicates that tart cherry trees start losing optimum productivity at about 20 years. Growers testified that they typically replant their trees when they are between 20 and 25 years old. The following table shows the percentage of acreage in each State that contained older trees in 1998.

State	% acreage 21–25 years	% acreage 26+ years	Percentage total 21+ years
Michigan	15	6	21
Utah	8	1	9
New York	24	7	31
Wisconsin	20	15	35
Washington	18	5	23
Pennsylvania	30	6	36
Oregon	30	48	78

Oregon, consistently the lowest yielding producing district, has substantially more older trees planted than other States. Because older trees tend to produce less fruit, and Oregon has a high percentage of older trees, this is likely to explain in part why Oregon's yields are, on average, lower than in other areas. Pennsylvania had the second largest percentage of older trees.

Another argument against eliminating the 15 million-pound threshold was that unregulated districts like Oregon and Pennsylvania had already ''done their part'' to reduce the surplus of tart cherries by reducing their acreage. Any continued surpluses were attributable to the major producing State, Michigan. It was therefore argued that State should bear the consequences of its actions and not impose its problems on the smaller districts.

The record shows that U.S. tart cherry bearing acreage had declined from a high of 50,050 acres in 1987, to 39,880 acres in 2000. All producing States recorded acreage reductions during this period. On a percentage basis, the greatest reduction was in New York (down 52 percent), followed by Oregon (down 36 percent), Utah (down 30 percent), Pennsylvania (down 25 percent), Washington (down 24 percent), and Wisconsin (down 17 percent). Michigan had the lowest percentage decrease (down 15 percent), but the largest decline in total number of acres (a reduction of 5,140 acres).

The record evidence is that acreage in all districts have declined over the past decade. Decisions to reduce acreage were made by individual growers based on their assessments of the best use of their land. While opportunities for alternative land uses vary somewhat by State, they also vary within the States.

In determining whether a surplus of tart cherries exists, total U.S. supplies are compared to total demand in the primary market. Production in each district contributes to the total supply, and thus to any surplus that may exist. However, Michigan accounts for such a large proportion of the total, that production in that State alone can warrant a volume regulation. Additionally, the evidence is that production in the smallest producing State—Oregon—is negatively correlated to production in Michigan. That is, when production in Michigan is high, production in Oregon is generally low. Thus, it is likely that with elimination of the production threshold, Oregon would be regulated in years when its production is below normal. This could result in a heavier burden being placed on growers in Oregon as a result of volume regulation than is true in the other producing districts.

Additionally, the record shows that the benefits of the supply management provisions of the order accrue to the entire U.S. tart cherry industry. The short-run benefits arise when surplus supplies are reduced, and market prices (due to the inelastic demand for tart cherries) rise to levels that are closer to growers' typical costs of production. Longer range gains are also expected from the encouragement to expand market demand through new market and new product development.

The aggregate short-run benefits to the industry's growers from the use of volume regulation in 1997 and 1998 have been estimated to be at least $20

million per year. This has resulted because the smaller market surpluses have resulted in stronger grower prices which are estimated to be 7 to 9 cents per pound greater during those years.

The record shows that tart cherries, regardless of where grown in the U.S., are sold into markets that are essentially national markets with similar, closely interrelated prices throughout the country. Therefore, the somewhat higher prices that have resulted from the order's supply management features have accrued to all tart cherry growers in the United States.

However, the history of the order and the evidence on the record support the premise that the smallest producing districts should not be subject to volume regulation under the tart cherry marketing order. Further, there is an argument to be made for reducing the current 15-million pound threshold. After considering all the testimony and other record evidence, the Department has concluded that a threshold of 6 million pounds would be more reasonable. This would result in all districts that have increased production over the past decade being subject to regulation, consistent with the original intent of the proponents of the order.

The record shows that the two districts that would not be regulated under a 6-million pound threshold—Oregon and Pennsylvania—produce insignificant volumes of tart cherries compared with total U.S. production. Production in these districts has not grown, nor is it anticipated that it will in the future. The evidence supports claims that these smaller producing districts would be more impacted by a volume regulation than other districts. Costs may be higher to growers in those areas than in others because they tend to have lower yields. Also, processing capacity in those districts tends to be limited, supporting the argument that production is unlikely to increase. In addition, processors in the smaller producing districts testified that they would have to shut down their facilities if those districts were subject to volume regulation because they would not be able to get sufficient supplies of cherries to run their operations efficiently. If the smaller producing districts do increase their production, they would become regulated once they reach the 6-million pound threshold.

The proponent evidence showed that while volume regulations have helped strengthen overall cherry prices, there are costs involved with complying with these regulations. Such costs include reduced returns for cherries that cannot be sold in primary markets. Imposing those costs on the smallest producing districts would not result in any higher overall price for tart cherries. Additionally, regulating the two smallest States would not reduce the volume of regulation imposed on cherries grown in the other States because of their low levels of production. In the four years that restricted percentages have been recommended by the Board, the percentage would not have changed at all in two of four years (by not including Pennsylvania and Oregon) and would have been marginally reduced in the other two years. Thus, it appears that the costs of regulating these minor districts would not be outweighed by any accrued benefits.

Allocation of Board Membership

Section 930.20 of the order provides for a Cherry Industry Administrative Board, appointed by the Secretary to locally administer the program. Among the Board's responsibilities is recommending regulations to implement marketing order authorities. The Board consists of 19 members: 18 tart cherry growers and handlers, and 1 public member.

For purposes of Board representation (among other things), the production area is divided into nine districts. Each district is allocated one to four Board members. Six of the nine current districts, including all districts subject to volume regulation, are allocated more than one member. Those five districts are Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), Utah (two members), and Washington (two members). The three districts with one member each are Oregon, Pennsylvania, and Wisconsin. The nineteenth Board member is selected to represent the general public, and need not be from any specific area.

Section 930.20 further provides that if a district with a single member becomes subject to volume regulation, that district will get a second Board member position. There is no specific requirement that a district must lose a seat if it falls below the 15 million pound threshold and is no longer subject to regulation.

The Board proposed amending § 930.20 to provide that membership for each district be based on the average annual production for that district over the previous 3 years. Districts with up to and including 10 million pounds would be represented by one Board member; districts with more than 10 and up to and including 40 million pounds would have two members; districts with more than 40 and up to and including 80 million pounds would have three members; and districts with more than 80 million pounds would have four members.

The record shows that this amendment could result in a larger number of Board members. Using average annual production figures for the years 1999 through 2001, one district (Wisconsin) would have been entitled to an additional Board member position for the term of office that began July 1, 2000. Thus, the total number of Board members under this proposed amendment would have increased to 20 members (versus 19 members under the provisions currently in effect).

An increase in the number of Board members would result in a marginal increase in Board expenses. This is because the Board reimburses members for costs incurred in attending Board meetings (travel costs, etc.). Since Board expenses are funded through handler assessments, all handlers would be impacted by slightly higher assessments.

However, these slight cost increases will be offset by better industry representation on the Board. Reallocating membership on an annual basis will allow membership to more closely reflect changing production trends in the industry. This should lead to better decision making by a more representative administrative body.

Designation of a Temporary Alternate To Act for an Absent Board Member

As previously discussed, the Board is composed of 19 members, with the industry members allocated among nine districts. Each Board member has an alternate who has the same qualifications as the member. Industry Board members and alternates are nominated by their peers in the district they represent.

Section 930.28 of the order provides that if a Board member is absent from a meeting, his or her alternate will act in that member's place. There is no provision for a situation in which both the member and that member's alternate are unavailable.

The Board has proposed changing § 930.28 as follows. If both a member and his or her alternate cannot attend a Board meeting, the member or the alternate (in that order) could designate another alternate member to act in their stead. If neither the member nor the alternate chooses to make such a designation, the Board's chairperson would be free to do so (with the concurrence of a majority of present members).

The record supports the concept of allowing more flexibility for alternates

to fill in for absent Board members. However, the Department is proposing a revision in the Board's proposal. This decision proposes allowing a Board member to designate an additional alternate to act in his or her place when that member and that member's alternate are unable to attend a Board meeting. However, if the member chooses not to name an additional alternate, that decision would not then revert to the Board or its chairperson.

This proposed amendment would allow more flexibility for Board members who cannot attend a Board meeting. It should also encourage a full contingency of voting members at Board meetings, while maintaining adequate representation among the districts comprising the production area. No additional costs should be incurred as a result of this change.

Clarification of Diversion and Exemption Provisions

As previously discussed, a primary feature of the tart cherry marketing order is supply management through the establishment of free and restricted percentages. These percentages are applied to each regulated handler's acquisitions of cherries. Free percentage cherries may be sold in any market, while restricted percentage cherries must be diverted by a grower or handler or placed in the inventory reserve.

Section 930.58 of the order provides for grower diversions. Under this section, growers may receive diversion certificates for cherries used for animal feed and cherries left unharvested in the orchard. Growers may also receive diversion certificates for ''uses exempt under § 930.62.'' A grower's diversion certificates can then be transferred to that grower's handler and used to meet the handler's restricted obligation.

Section 930.59 provides for handler diversions. Handlers may receive diversion credits for cherries used in such forms as the Board may designate, with approval of USDA. These forms may include destruction at the handler's facility; use in Board approved food banks or other approved charitable organizations; acquisition of grower diversion certificates; and uses exempt under § 930.62. Handlers desiring to use the first three forms must notify the Board prior to diverting cherries. Use of the fourth form requires application to and approval by the Board prior to diversion.

Section 930.62 provides that certain cherries may be exempt from volume regulation upon Board recommendation and USDA approval. Such cherries would also be exempt from assessment obligations and any established quality standards. Section 930.62 currently provides that exemptions may be provided for cherries diverted in accordance with § 930.59 (Handler diversion privilege); used for new product and new market development; or used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries was utilized.

The record indicates that the industry supports continuation of both the authority to exempt certain cherries from regulation, and the authority to provide diversion credits for cherries used for certain purposes. The application of each provision is different, however. An example provided at the hearing illustrates the difference. Assume a restricted percentage of 20 percent has been established, a regulated handler acquires 10 million pounds of cherries, and that handler uses 2 million pounds of those cherries for new market development. This handler would have a restricted obligation of 2 million pounds of cherries (20 percent of the 10 million pounds of cherries acquired).

If cherries used for new market development were eligible for diversion credit, this handler would have met his or her restricted obligation by using 2 million pounds for that purpose. The handler could thus market the remaining 8 million pounds of his or her cherries as free percentage cherries in any outlet he or she chose. If, however, cherries used for new market development were exempt from regulation, the restricted percentage would be applied to that handler's total acquisitions (10 million pounds), less the volume of cherries exempt from regulation (2 million pounds). Thus, this handler would have a restricted obligation of 1.6 million pounds (20 percent of 8 million pounds), which would have to be diverted in forms approved by the Board as eligible for diversion credit.

Cross references between §§ 930.59 and 930.62 have proved to be confusing. Thus, these sections are proposed to be amended by deleting those cross references. Also, uses listed under § 930.62 as possible exempt uses are being listed under § 930.59 as possible uses eligible for handler diversion credit. Rulemaking would be required to designate whether a particular use would be exempt from regulation or would constitute an approved diversion outlet. Such rulemaking would be based on Board recommendations, following its assessment of the impact exemptions or diversions would have on the tart cherry industry.

This proposed amendment is a clarification of the current order and its operation. It would not introduce new or different concepts. To the extent that it makes the order easier for growers and handlers to understand, it should be of benefit to the industry.

Exemption or Diversion Credit for Export Shipments

As discussed in the previous material issue, §§ 930.59 and 930.62 provide for handler diversions and exemptions, respectively. Certain uses of cherries are listed as eligible for diversion credit or exemptions. Under the authority in these sections (specifically, that for market development), diversion credits have been made available to handlers during recent crop years for shipments to export markets, excluding Canada and Mexico. Canada and Mexico were not included because of their proximity to the United States and concern about compliance matters.

The record indicates that allowing export shipments to receive diversion credits resulted in stronger export sales. Exports in 1997–98 were unusually high (around 50 million pounds), although they declined during the next season to 34 million pounds. Witnesses stated that the tart cherry industry needs to expand demand for its product through, among other things, development of new markets.

The Board proposed adding specific authority to §§ 930.59 and 930.62 to allow diversion credits or exemptions for such export markets as recommended by the Board and approved by the Secretary. This is a clarifying change only. It would impose no new or different regulatory requirements on the tart cherry industry.

Diversion Credit for Juice and Juice Concentrate

Section 930.59 of the order relates to how handlers may receive diversion credits to offset their restricted obligations. Paragraph (b) of that section states that diversion may not be accomplished by converting cherries into juice or juice concentrate.

The Board recommended that the order be amended by deleting the prohibition in § 930.59(b) that shipments of cherry juice and juice concentrate to approved diversion outlets be eligible for diversion credit.

The record indicates that in the promulgation proceeding, handlers from Oregon and Washington were concerned that juice concentrate could be established as a use eligible for

diversion credit. Those handlers indicated that they processed all or a majority of their cherries into juice concentrate. Cherries produced in that area of the country have a high brix (sugar content) level desirable for juice concentrate. Concern was expressed that if the Board decided to allow diversion credit for juice concentrate, an increase in the volume of juice in the marketplace and an accompanying reduction in juice prices could result. This would unduly harm the industry in the Washington and Oregon. USDA therefore inserted the provision to prohibit the use of juice or juice concentrate for diversion credit.

However, the use of juice and juice concentrate for export was allowed under the exemption provisions of the order for the 1997–98 season. The 1997–98 season was the first season of operation for the cherry order, and its provisions were new to the industry and complex to administer. Handlers unfamiliar with order's diversion provisions had exported or contracted to export tart cherry juice or juice concentrate to eligible countries with the intention of applying for and receiving diversion certificates for those exports. If those handlers had been prohibited from receiving diversion certificates for those sales, the handlers would have incurred severe financial difficulties. Thus, the prohibition against exports of juice and juice concentrate was suspended for the 1997–98 season only.

The record shows that until 1997, the juice market was distressed. One reason was that there had been large volumes of concentrate produced in the preceding years in the Western United States—volumes that exceeded market demand. In 1995 particularly, there was a very large crop of tart cherries (a record 395.6 million pounds), and a large portion of that crop was processed into concentrate. An oversupply situation occurred, which led to low prices and a large carry-over of concentrate.

Witnesses claimed that the operation of the order has helped address the cherry oversupply situation, including the surplus of juice. Allowing exports of juice to receive diversion credits in 1997–98 was quite successful. The industry exported more than 4 million pounds (raw product equivalent) of juice concentrate that year, comprising about 10 percent of total exports qualifying for credit. At 9 cents per pound for the raw fruit, growers received about $382,500 in revenue from these sales. Handlers, whose value-added component is about $5.00 per gallon (or $.056 per pound), received $236,000 in revenue. In total, the industry gained at least $618,000 from export sales of juice concentrate in 1997–98.

Providing diversion credits for exports of juice concentrate by handlers in the regulated districts encouraged more exports of this product. The higher levels of exports of concentrate helped reduce heavy inventories and reduced the supplies available in the domestic market. This led to an increase in the domestic price for juice concentrate of about $4.00–$6.00 per gallon. Producers whose cherries were processed into concentrate benefitted from the strengthening of domestic juice prices.

In 1998, diversion credits were no longer authorized for exports of juice and juice concentrate. Witnesses stated that this hurt the U.S. cherry industry. Demand for juice concentrate in Europe was strong, but domestic processors could not export juice concentrate in a way that was economically feasible. Some processors exported raw juice stock to Europe so the raw stock could be juiced overseas. This meant that the added value of converting the stock to juice concentrate was lost to U.S. processors. It also meant higher freight costs for the raw product (versus concentrate). When juice stock was exported, the freight cost to Europe was about 10 cents per pound. Growers received little for cherries exported as raw juice stock, while grower returns for exported juice concentrate were positive.

Further, this restriction resulted in shorting the export juice market. Witnesses stated that if you are unable to supply a market consistently, that market looks for a more reliable source of supplies. When a market is lost to the U.S. industry for this reason, it is difficult to regain. This is particularly detrimental to the tart cherry industry as it seeks to expand markets for its heavy supplies of product.

As previously indicated, the prohibition on diversion credits for juice and juice concentrate was in response to concerns expressed by the industry in the Northwest. At the time the order was promulgated, it was represented that more than 85 percent of the crop in Washington was processed into juice. During recent years, less than half of the Washington crop was used for juice. Most of the rest of the crop was used for 5 + 1 cherries (25 pounds of cherries to 5 pounds of sugar). Additionally, the record shows that in 1993 there were 7 pitters in the State; by 2000, that number had grown to 20. This supports the conclusion that processors in Washington are able to pack a wider variety of finished products. Cherries grown in Washington have increasingly been processed into products other than juice and juice concentrate.

Also, production in the State of Washington has grown, and a number of witnesses at the hearing held in early 2000 expressed their belief that Washington would soon produce in excess of 15 million pounds annually and thus would become subject to volume regulation. In fact, production in Washington for the 3 years 1998 to 2000 averaged 15.9 million pounds, and Washington became subject to volume regulation in 2001. It was critical for handlers in Washington to be able to receive diversion credits for exports of juice and juice concentrate. This was particularly true because 5+1 cherries do not generally sell in export markets because they contain sugar and are thus subject to increased tariffs when exported. For these reasons, the Board unanimously recommended suspension of the prohibition on receiving diversion credit for exports of cherry juice and juice concentrate. This suspension became effective August 1, 2001 [66 FR 39409, July 31, 2001].

An additional benefit of allowing diversion credits for exported juice and juice concentrate is that it would ensure that the domestic market is adequately supplied in short crop years. In years when the crop is small, most available tart cherries will be used to supply higher value finished products rather than juice concentrate. If the industry does not have a supply of concentrate in reserve, the juice markets, both domestic and foreign, could go unsatisfied. In order to have supplies available in short crop years, there needs to be an incentive to have tart cherries stored as juice concentrate. Making juice and juice concentrate eligible for diversion credit would create an incentive to produce and store concentrate, which would ensure that markets for those products are adequately supplied. It could also result in fewer cherries being diverted in the orchard. This would benefit growers through enhanced revenues, because they receive more for cherries that are processed and sold than for cherries that are diverted in the orchard.

This proposed amendment would result in additional options for handlers in meeting their restricted obligations under the order. It would also encourage expansion of markets for U.S. tart cherry products, which should benefit the industry as a whole. It would not adversely impact the sale of juice and juice concentrate in primary markets; in fact, it could tend to strengthen prices in those markets. This is because more

juice would likely be exported, which would reduce the supply available in the domestic market.

Handler Transfers of Diversion Credits

Section 930.59 of the order provides for handler diversion credits. Those diversion credits are used by handlers to meet their restricted obligations. That provision of the order is silent with respect to the ability of handlers to transfer diversion credits among themselves to meet their restricted obligations.

The Board proposed adding a new paragraph (e) to § 930.59 to provide that a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers.

The record shows that allowing transfers of diversion certificates provides additional flexibility to tart cherry growers and handlers in meeting program requirements, without changing the amount of tart cherries available to be marketed as free percentage cherries. This can also result in the processing of the highest quality cherries available in any crop year, which would benefit the industry as a whole.

One witness at the hearing explained as an example that Handler A may acquire a very high quality of tart cherries in a given year, and would want to process and sell a higher percentage of those cherries than his or her free percentage would allow. Handler B may be in a situation where he or she receives more diversion credits than needed because most of that handler's pack is for export. (We are assuming that export sales are eligible for diversion credits.) Handler B might want to transfer those excess credits to Handler A.

Additionally, there may be a situation in which Handler C's growers have low quality cherries due to adverse growing conditions. These growers may choose to use in-orchard diversions to a greater extent than they normally would. Handler C could wind up with more diversion credits than needed and may want to transfer those credits to Handler A. A simple example to illustrate this situation follows. In this example, we will assume a restricted percentage of 40 percent has been established.

Handler	Receipts (pounds)	Restricted obligation (pounds)	Exports (pounds)	Grower diversions (pounds)	Excess diversion credit (pounds)
A	100,000	40,000	0	0	(40,000)
B	100,000	40,000	70,000	0	30,000
C	100,000	40,000	0	50,000	10,000

In this case, Handler A needs diversion credits totaling 40,000 pounds to meet his or her restricted obligation, while Handlers B and C have excess credits representing 40,000 pounds of cherries. If Handler A could receive Handler B's and C's excess diversion credits, he or she could use them to fulfill Handler A's restricted obligation. Otherwise, Handler A would have to divert 40,000 pounds of cherries (by destroying them, for example) or put them in the inventory reserve. With the ability to transfer diversion credits, Handler A could acquire excess credits from Handlers B and C. Handler A would benefit by being able to process all of his or her cherries for free use. Handlers B and C (and their growers) would benefit by being compensated for their diversions, including those above the required amount.

Both the transferring handlers' and the receiving handler's growers would benefit. Also, the overall quality of the crop marketed could be improved. This would serve to increase consumer confidence and acceptance, thereby strengthening demand for tart cherries. This would benefit the U.S. tart cherry industry as a whole.

Additionally, if the transfer of diversion credits were not allowed, the market could be shorted. This would have a detrimental impact on the tart cherry industry. Again, we will use the above illustration and assume these three handlers comprise the entire industry.

Handler	Receipts	Restricted obligation	Excess diversions	''Free'' sales	
				With transfers	Without transfers
A	100,000	40,000	(40,000)	100,000	60,000
B	100,000	40,000	30,000	30,000	30,000
C	100,000	40,000	10,000	50,000	50,000
Total	300,000	120,000	0	180,000	140,000

With a 60 percent free percentage, it would be expected that 180,000 pounds of cherries would be available for sale as free percentage cherries (60 percent of total receipts of 300,000 pounds). As shown above, without the ability to transfer diversion credits, the total volume of ''free'' cherries available to market would be only 140,000 pounds. This would be well below the 180,000 pounds deemed necessary to meet market demand. This would hamper the industry's efforts to expand markets for its products. Allowing transfers of diversion certificates therefore has a positive impact on the industry.

Grower Diversion Certificates

Section 930.58 provides that a grower may voluntarily choose to divert all or a portion of his or her cherries. Typically, this is accomplished by leaving cherries in the orchard unharvested, although other means are provided as well. Upon diversion in accordance with order provisions, the Board issues the grower a diversion certificate which the grower may then offer to handlers in lieu of delivering cherries. Handlers may then redeem those certificates to meet their restricted obligations.

Section 930.52(d) of the order provides that any district producing a crop which is less than 50 percent of the average annual processed production in

that district in the previous 5 years is exempt from any volume regulation in that year. This provision was included in the order to help relieve a district from the burdens of the order in a year in which its processors and growers were already suffering from a severely short crop.

The Board proposed an amendment to § 930.58(a) to provide that any grower diversions completed in a district subsequently exempt from regulation under § 930.52(d) will qualify for diversion credit.

Witnesses at the hearing testified that this is a needed change to the order to reduce the risk growers face in deciding whether or not to divert all or a portion of their crops. The reason such risk exists is primarily due to the difference between the time diversions must take place and the time a district's final production figure is known.

The Board is required to meet on or about July 1 of each crop year to develop its marketing policy and recommend preliminary free and restricted percentages (if crop conditions so warrant). The marketing policy is typically a week or two after the release of the USDA tart cherry crop estimate in late June. Final free and restricted percentages are not recommended until after the actual crop production figure is available. This is typically not until September, after harvest is complete. This is also when a final determination is made as to whether a district will be covered by regulation in accordance with § 930.52(d).

The record shows that the tart cherry crop is harvested in late June or July. Growers must, therefore, make decisions as to whether to undertake diversion activities before they are certain whether or not their district will be covered by regulation. This occurred in Southwest Michigan in 1997. Based on the USDA estimate, it was expected that this district would be covered by volume regulation during the upcoming crop year. However, the actual crop came in at less than 50 percent of the prior 5-year average production in that district, and Southwest Michigan (District 3) was exempt from regulation.

Witnesses testified that growers who divert their crops in anticipation of a volume regulation should not be penalized for that decision because the USDA crop estimate indicates their district will be regulated, but it turns out it is not. If those growers' diversion certificates become invalid, they receive nothing for the cherries they diverted. If their diversions continue to qualify for credit, however, handlers who accept those diversion certificates compensate the growers for them.

Without this amendment, the record shows that growers in some districts (where application of volume regulation is uncertain) could be forced into harvesting their crops. This would be contrary to the program objective of balancing tart cherry supplies with market demand.

This amendment should benefit tart cherry growers who choose to divert cherries in anticipation of a volume regulation. It should also contribute to the supply management objectives of the program, which would benefit the U.S. tart cherry industry as a whole.

Release of Cherries in the Inventory Reserve

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted through non-harvest, destruction at a handler's facilities, or shipment into approved secondary outlets.

The order specifies three possible releases of inventory reserves under §§ 930.50 (g) and (j) and 930.54 (a). The first, under § 930.50 (g), releases an additional 10 percent (above the optimum supply level) of the average of the prior 3 years sales if such inventory is available. This release is for market expansion purposes.

The second release, under § 930.50 (j) occurs in years when the expected availability from the current crop plus expected carry-in does not fulfill the optimum supply (100 percent of the average annual sales in the prior 3 years plus the desirable carry-out). This release is made to all handlers holding primary inventory reserves and is a required release to be made by the Board if the above conditions are met and reserve cherries are available. This provision is intended to assure that inventory reserves are utilized to stabilize supplies available on the market. Under this authority, cherries released from the reserve can be sold in any market.

The third release is authorized under § 930.54 (a) which allows the Board to recommend to the Secretary a release of a portion or all of the primary (and secondary) reserve. To make this release, the Boards needs to determine that the total available supplies for use in commercial outlets do not equal the amount needed to meet the demand in such outlets.

The Board recommended an amendment to § 930.54 to provide a fourth option for a reserve release. Specifically, it proposed that a portion or all of the primary and/or secondary inventory reserve may be released for sale in certain designated markets.

Witnesses at the hearing suggested that the industry (through the Board) needs more flexibility in determining how to utilize inventory reserves. One witness opined that limited releases of reserves during years of non-regulation may be necessary to maintain markets that are available for diversion credits during years of regulation. The example given dealt with sales to export markets other than Canada and Mexico. In years of volume regulation, sales of cherries to these markets are eligible for diversion credits that handlers may use to meet their restricted obligations.

In developing its marketing policy and determining whether a surplus exists, the optimum supply is compared with available supplies. The optimum supply is defined as average sales over the last 3 years, minus sales qualifying for diversion credit. Thus, the optimum supply measures the volume of cherries needed to fill demand in the primary market. If anticipated supplies exceed demand in the primary market, a volume regulation may be issued. Restricted percentage cherries are then used to fill these secondary markets.

If anticipated supplies are reasonably in balance with demand in the primary market, no volume regulation would be issued. Since all of a handler's cherries would then be ''free'' percentage cherries, he or she would likely attempt to sell all those cherries in the primary market because returns tend to be higher in that market. This could result in few cherries being made available for sale in secondary markets (such as exports).

The record shows that the tart cherry industry needs to continue its efforts to expand markets. A critical aspect of this effort is to ensure that supplies are available to fill needs in developing markets. If, for example, an export market is developed over the course of time, and then cherries are not available to supply that market, that market may be lost to the industry. The Board's proposal would allow a release of inventory reserves to meet the needs of these specific markets. This should contribute to the long-run health of the industry.

Another witness suggested that a limited release should also be possible for specific types of cherry products. He stated that over time, the mix of products offered by the tart cherry industry has changed considerably. New product development should continue to be encouraged to expand marketing opportunities for the industry. Releases

of inventory reserves can play a part in this endeavor.

The witness gave a hypothetical situation using dried cherries as an example. He said that if demand for dried cherries was very strong, and supplies of that product from the current year's crop were insufficient to meet that demand, releases of that product from the inventory reserve should be authorized.

This proposed amendment should contribute to the industry's efforts to balance tart cherry supplies with market demand. It will give the Board more flexibility in determining when inventory reserve cherries should be released for use. It will not impose any additional regulatory requirements on tart cherry handlers.

Ten Percent Reserve Release for Market Expansion

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted into approved secondary outlets.

Section 930.50 provides that any volume regulation make available as free percentage cherries an ''optimum supply'' of tart cherries. The optimum supply is defined as the average sales of the prior 3 years (minus sales of cherries qualifying for diversion credit) plus a desired carry-out. Section 930.50(g) further provides that in addition to the free market tonnage percentage cherries, the Board must make available tonnage equal to 10 percent of the average sales of the prior 3 years for market expansion.

The Board proposed amending § 930.50(g) to specify that the 10 percent reserve release only apply during years when volume regulation is in effect.

The record shows that the 10 percent reserve release provision was made a part of the order in large part due to USDA policy guidelines. The Secretary's Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders (Guidelines) state that, under volume control programs, primary markets should have available a quantity equal to 110 percent of recent years' sales in those outlets before the Secretary would approve secondary market allocation or pooling. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with burdensome supply situations.

Witnesses in support of the Board's proposal stated that allowing for and encouraging market growth in years of surplus supplies is sensible. In fact, several witnesses stated that an important objective of the tart cherry industry and the marketing order program is to expand markets for tart cherries. This is supported, for example, by the authorization of diversion credits for new product and new market development.

Several witnesses spoke against the 10 percent release during years of no volume regulation, however. Two concerns were expressed in this regard. First, the release of inventories in a year in which supplies and market demand are reasonably in balance results in an oversupply situation. This can be accompanied by reduced grower prices. Second, and probably more important, industry reserves can be depleted. One objective of keeping an inventory reserve is to aid in stabilizing annual supply fluctuations and safeguard against the detrimental impacts of a short crop year.

The record shows that the tart cherry industry experiences cycles in acreage and production. During the phase of the cycle with less bearing acreage and shorter supplies, a short crop year can result in significant shortages of available market supplies. This can curtail continued market demand and market growth. When supplies are short, they can be supplemented by reserve cherries. This would mitigate spikes in prices, which hinder long term market demand. Food manufacturing customers in particular demand a stable supply of product at reasonable prices. Absent a reliable supply, these customers tend to substitute other fruits in their products.

The use of the inventory release option also provides that some surplus supplies in a large crop year with low prices can be carried over to short crop, high price years. This results in improved revenues for growers and processors. The use of the inventory reserve option also provides an alternative to grower diversions (i.e., non-harvest).

Several witnesses used the 1999–2000 crop year to show the effects of a reserve release during a year of no regulation. During that year, the crop was 251.0 million pounds which, when added to a carryover from the previous crop year of 38.0 million pounds, yielded total available supplies of 289.0 million pounds. With the optimum supply at 285.0 million pounds, the Board found that supplies were reasonably in line with market demand, and recommended no volume regulation be implemented.

At the beginning of the crop year, industry reserves totaled 28.4 million pounds. Four million pounds were released early in the crop year to meet unanticipated demand, leaving 24.4 million pounds in the reserve when it came time for the release for market expansion. Ten percent of the 3-year average sales figure meant that 28.5 million pounds should have been released for market expansion; however, there were only 24.4 million pounds in the inventory reserve, so the entire reserve was released.

Witnesses claimed that the release of reserves in the current crop year may result in a surplus supply of cherries in the marketplace. This could put a downward pressure on price, and could result in a higher carryover into the next crop year. This could mean a greater surplus in 2000–2001, which could result in a higher restricted percentage and greater probability of cherries being left in the orchard unharvested.

Ultimately, these releases could result in less economic incentive to place cherries in the reserve because they could be released at the wrong time and return little to growers. With less incentive to participate in the inventory reserve, more cherries would likely be diverted by growers through non-harvest. Overall grower returns would be lower, and long term market losses may occur.

This proposed amendment should contribute to the industry's efforts to balance tart cherry supplies with market demand. It will give the Board more flexibility in determining when inventory reserve cherries should be released for use. It will not impose any additional regulatory requirements on tart cherry handlers.

Assessments on All Cherries Handled

Section 930.40 of the order authorizes the Board to incur such expenses as the Secretary finds are reasonable and necessary for it to administer the tart cherry marketing order program. Section 930.40 further provides that the Board's expenses be covered by income from handler assessments.

Section 930.41 provides that handlers pay their pro rata share of the Board's expenses. Each handler's share is determined by applying the established assessment rate(s) to the volume of cherries each handler handles during a crop year. Section 930.41 further provides that handlers are exempt from paying assessments on cherries that are diverted in accordance with § 930.59, including cherries represented by grower diversion certificates issued under § 930.58. Cherries devoted to exempt uses under § 930.62 are also free from assessments.

The Board recommended that § 930.41 be amended to provide that all cherries processed and sold by handlers

be subject to assessments. The only cherries that would be exempt from assessments would be those diverted in-orchard by growers, and those diverted by handlers through destruction at their plants.

Proponent witnesses testifying in support of this change stated that all processed cherries should be subject to assessments because handlers profit from the sale of these cherries. This is because each pound of fruit processed increases the handler's overall profitability by reducing the per unit cost of processing. This is true even if the cherries are used in an outlet approved for diversion credit.

The record shows that handlers have different ways of meeting their restricted obligations. Their decisions are based on their own marketing strategies. Some handlers take advantage of marketing their products in eligible diversion outlets, while others either cannot or do not do so. Witnesses suggested that providing an exemption from assessments to handlers who choose to divert their cherries through sales in those designated outlets creates a competitive advantage over their competitors who do not do so. It was their opinion that if a substantial volume of cherries is diverted by certain handlers, the burden of financing the program increases on other handlers. Those in support of assessing all processed cherries concluded that subjecting all processed cherries to the assessment provisions of the order would eliminate this unintended advantage.

Additionally, the record shows that a large portion of the Board's annual expenses is incurred for oversight of compliance activities related to diversion credits. For example, for those export sales eligible for diversion credit, handlers are required to submit proof of export. The documentation typically consists of warehouse receipts, bills of lading, overseas bills of lading, and other documents proving the cherries were exported. The Board staff reviews the documentation submitted by each handler for sufficiency, requests additional documentation if necessary, and issues diversion certificates upon proof of compliance with order requirements. Similar activities are undertaken with respect to sales in other designated diversion markets (e.g., new product development). Witnesses stated that those handlers who take advantage of these order provisions should pay their share of the costs of enforcing those provisions.

One witness also stated that an advantage of this amendment would be that it would broaden the assessment base under the order. This would lower the assessment rate needed to effectively administer the program.

This amendment would increase assessment obligations on handlers who choose to divert their restricted percentage cherries in approved outlets. However, it would also tend to result in a more reasonable assessment system.

Uniform Assessment Rate

As discussed in the preceding section, §§ 930.40 and 930.41 of the order provide that the Board may incur certain expenses, and that the funds to defray those expenses be paid by handlers through assessments. Section 930.41 also provides, among other things, that the assessment rate(s) recommended by the Board and approved by the Secretary must compensate for the differences in the amounts of cherries used for various cherry products and the relative market values of those products.

The Board recommended that § 930.41 be amended to provide that a uniform assessment rate be established for cherries used in any or all products. This would be true unless the Board decided to consider the volumes of cherries used for various products and their relative values; if that were the case, the Board could recommend differential assessment rates if warranted.

The record shows that at the time the order was promulgated, proponents of the program supported different assessment rates being established for cherries used for various products. In their testimony, they suggested that high value products such as frozen, canned or dried cherries be assessed at one rate, and low value products such as juice concentrate and puree be assessed at one-half that rate.

Proponents of the Board's recommended amendment stated that the order should not require one rate for certain products and twice that rate for others. They stated that while a two-tiered assessment rate scheme may be appropriate in some years, it may not be in others. They cited the fact that the absolute and relative market values of various tart cherry products fluctuate from year to year.

One witness testified, for example, that producer returns for cherries used for juice concentrate are comparable to those for other products. He stated that cherry juice concentrate was selling for about $17 per gallon. Subtracting estimated handling charges of $5.81 per gallon, the net return to the grower would be an estimated $11.19. In Washington, where about 50 pounds are required to make a gallon of concentrate, growers would receive 22 cents per pound. In Michigan, where it takes approximately 90 pounds of cherries to make a gallon of concentrate, growers would receive 12 cents per pound. This witness stated that grower returns in this range are comparable to returns available for other products.

The conclusion of the proponent witnesses was that the Board should have discretion in determining appropriate rates of assessment. They did not believe a two-tiered approach should be mandated.

An opponent of the proposed change stated that the order should continue to require the Board to consider the volume of raw product used in producing various cherry products as well as the relative value of those products in recommending annual assessment rates. He stated that he did not necessarily support two levels of assessment rates, but believed the Board should be required to give due consideration to relevant factors in making its recommendations.

The Department concludes that while there may be justification for establishing different assessment rates for different products, it should not be required under the order. Thus, the proposed amendment to § 930.41 provides that in its deliberations pertaining to appropriate levels of assessment rates, the Board should consider the volume of cherries used in making various products and the relative market value of those products. The assessment rate established may be uniform or may vary among products, based on the Board's analysis.

Implementation of this amendment could result in a single, uniform assessment rate applicable to all cherries. Such action would likely increase the rate established for cherries used for juice concentrate and puree, and could result in a lower rate for cherries used for other products. The impact of any such action would be analyzed by the Board and USDA prior to its effectuation.

Crop Production Estimate

Section 930.50 of the order requires the Board to develop an annual marketing policy. This policy serves as the basis for determining the level of volume regulation needed in a given crop year. First, the Board determines the ''optimum supply'' which is defined as the average sales of cherries in the past three years plus the desirable carry-out. Next, the Board takes the crop forecast for the upcoming year and subtracts from it the optimum supply (less the carry-in). If the remainder is positive, it represents a surplus in

supplies, supporting the use of volume regulation. Section 930.50 prescribes that the Board must use the official USDA crop estimate as its crop forecast.

The Board's amendment proposal would allow the Board to use a crop estimate other than the official USDA crop estimate in its marketing policy.

The record shows that USDA bases its pre-harvest estimate on two methods. In Michigan, an objective yield survey is done by the State. Such a survey is based on the actual count of fruit on the tree, the number of trees per acre, and the acres in production. In the other producing States, subjective yield surveys are done by those States. This method entails canvassing tart cherry growers and handlers to obtain their assessment of the upcoming year's crop.

The Michigan crop survey costs a total of $60,000 per year. Of this total, the Board pays $24,000. The Board's share was expected to increase to half of the total in 2001. Concern was expressed at the hearing that if the industry decides to no longer contribute to the cost of the Michigan State survey, that State would likely discontinue its objective yield surveys and turn to subjective yield surveys. This could result in a less reliable crop estimate than is currently available. This is of particular concern because Michigan produces more than 70 percent of the U.S. tart cherry crop.

Witnesses in support of this proposal stated that, in some years, USDA's pre-harvest crop estimate may not be accurate enough due to quickly changing crop conditions. They stated that current order provisions prohibit the Board from using any other estimate even if the majority of Board members, with their years of experience in the industry, believe USDA's estimate in a given year is inaccurate. Using the most accurate crop estimate available in deriving preliminary free and restricted percentages is important because growers and handlers make decisions based in part on those percentages. For example, growers decide whether to divert or harvest their crops; these decisions are irrevocable. Handlers also make pack and marketing plans based in part on the expected level of regulation. If actual harvest varies significantly from the pre-harvest estimate, growers and handlers could suffer economic harm. Using the most accurate information available is therefore necessary to enhance industry decision making.

One witness pointed to the situation faced by district 3 (Southern Michigan) growers in 1997. As previously discussed under Material Issue Number 9, at the time the Board developed its marketing policy, indications were that district 3 would be regulated that year. Subsequent to harvest, however, it was determined that volume regulation would not apply to district 3 cherries that year. Growers who made decisions to divert their crops based on the Board's marketing policy estimates found themselves with diversion certificates that were of no value.

The record shows that the USDA estimate should be used by the Board unless two things happen. The first would be that the Board would have to agree that the USDA estimate was inaccurate. The second would be that the Board would have to agree on another estimate or estimates to use. Both these actions would require concurrence by at least two-thirds of the Board members. This would safeguard against the possibility of some members attempting to manipulate the crop estimate to impact the level of volume restriction.

In addition, witnesses testified that other estimates used by the Board would have to be from other reliable, independent sources, and would be averaged in with the USDA estimate. Currently available is an annual estimate made by the Michigan Food Processors Association. Other possible sources include the Michigan Agricultural Cooperative Marketing Association and individual State grower associations.

This proposed amendment provides the Board with more flexibility in developing its marketing policy and recommending preliminary free and restricted percentages. To the extent that the Board's decision making improves, the entire U.S. tart cherry industry would benefit.

The collection of information under the marketing order would not be affected by these amendments to the marketing order. Current information collection requirements for Part 930 are approved by OMB under OMB number 0581–0177.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Board meetings regarding these proposals as well as the hearing dates were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Board deliberations on all issues. All Board meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Findings and Conclusions; Discussion of Comments

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the January 24, 2002, issue of the **Federal Register** (67 FR 3540) are hereby approved and adopted subject to the following additions and modifications.

Material Issue Number 1—Districts Subject to Volume Regulation

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 1 of the Recommended Decision (whether to change the criterion for determining which districts are subject to volume regulation) are amended by adding the following 18 paragraphs to read as follows:

Ninety-four exceptions were filed regarding this issue, mostly from tart cherry growers and processors in the

production area. Seventeen of those exceptions supported the Department's recommendation to reduce the annual production threshold to 6 million pounds. The majority of these were from industry members in Pennsylvania (12 of the 14 comments received from that State). Two Michigan growers, two Oregon growers, and one Washington grower also supported the 6 million pound threshold.

These 17 comments generally agreed with USDA's conclusion that there continues to be a need to set a minimum production threshold to recognize the unique circumstances of the smallest producing districts. They stated that imposing regulation on these areas would result in costs that would exceed any benefits derived. It was their contention that the tart cherry industries operating in the smaller districts would be detrimentally impacted by volume regulation, while regulating them would change very little because these States are minor producers of cherries.

The President of Knouse Foods, the only processor operating in Pennsylvania, was one of the commenters who supported the 6 million pound threshold as a compromise, although he indicated leaving the threshold at its current level of 15 million pounds would be preferable. In his exception, he asked that if USDA goes forward with the reduction in the threshold, that it also inform the industry that this topic will not be reopened. He suggested that the Board should shift its focus from this issue to the more important issue of how the industry can sell more cherries.

The Department is aware that this issue has been of significant concern to tart cherry producers and handlers recently. This is supported by the number of witnesses who testified at the hearing and the number of exceptions filed on this matter. While this issue has been explored in depth during this proceeding, it cannot be concluded that it will never need to be reassessed sometime in the future.

Fourteen comments were received in opposition to any change in the current production threshold of 15 million pounds. In this category were two Pennsylvania growers, five Oregon growers, one Washington grower, and six commenters from Wisconsin (including a Congressperson).

Many of the comments in this category echoed the arguments of those in support of the 6 million pound threshold. That is, they believed a production threshold was needed to protect smaller growing areas which have higher costs and lower returns.

Several exceptions mentioned that the 15 million pound threshold was a compromise made when the program was put into effect, and it is unfair for those in the larger growing areas to now go back on the promises that were originally made. Also, some stated that this is an effort by the Michigan industry to eliminate competition from other areas.

It is true that proponents of the order supported the 15 million pound threshold during the promulgation process. However, the order authorizes the Board to seek amendments to the program. This is to recognize that things change over time, and changes may be needed to improve the operations of the program. In fact, much testimony was presented at the hearing about experience gained during the first years of operating the program. Many issues have arisen that were not foreseen at the time the program was put in place. Based on the record evidence, USDA has concluded that the threshold should be reduced, but not eliminated.

Two Oregon growers opposed lowering the threshold level because they feared the precedent it would set. They were concerned that the Board would continue its attempt to eliminate the threshold altogether.

As previously stated, this subject has been examined in depth during this proceeding. USDA does not believe current conditions in the tart cherry industry support a reduction in the production threshold below 6 million pounds. However, it cannot be concluded that this issue will not be reexamined at some point in the future.

Most of the comments received from Wisconsin (22 out of 28) supported the Board's proposal to reduce the threshold to zero. The remaining six opposed any change in the current threshold. Some of these exceptions stated that making Wisconsin subject to volume regulation would result in some growers and handlers going out of business. One of the Wisconsin commenters in support of retaining the 15 million pound threshold stated that establishing a 6 million pound threshold could end tart cherry production in Wisconsin. Commenters also claimed that production and acreage in Wisconsin are expected to decline, so there is no need to regulate that district because it does not contribute in any meaningful way to the oversupply situation. However, there were other Wisconsin commenters who supported a zero threshold.

The record evidence does not support the claims concerning a decline in Wisconsin production. Production in Wisconsin has increased since the inception of the order, and no one presented evidence at the hearing that this was expected to change. In any event, if production were to decline significantly (below 6 million pounds), Wisconsin would again become unregulated.

Volume control provisions of the order have stabilized tart cherry marketing conditions and have been economically beneficial to growers and handlers in the production area. As with all volume control programs, there will be those who may argue that they are economically disadvantaged and therefore disagree with controls which are implemented. However, in light of the changes in the industry since the promulgation of the order, and the experience which has been gained in administering volume control provisions, it is the Department's belief that, at this time, a 6 million pound threshold will best serve the interests of the industry.

Sixty-five comments were received objecting to USDA's recommendation to reduce the threshold to 6 million pounds, and supporting the Board's proposal to eliminate the threshold. Thirty-three of these were from Michigan, 22 from Wisconsin, 5 from Utah, 3 from New York, and 2 from Washington. Proponents questioned the concept of the order focusing on districts rather than the individuals within them. No amendments were offered to change the district structure of the order pertaining to volume regulation, and the subject was not developed at the hearing.

The arguments raised in comments supporting a zero threshold were introduced at the hearing and have been addressed in this discussion of Material Issue Number 1. These arguments pertain mainly to the issue of ''equity.'' That is, it is simply not fair that some districts are subject to volume regulation and some are not. All cherries produced contribute to the surplus; everyone in the industry benefits from the operation of the marketing order; and, thus, everyone should bear a share of the burden of regulation.

The Act requires that marketing orders be limited in their application to the smallest regional production area practicable. In the case of tart cherries, USDA has determined that this includes the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The Act also requires the marketing orders prescribe such different terms applicable to different areas, as USDA finds necessary to give due recognition

to the differences in production and marketing in those areas.

Both the promulgation record and the record of this hearing are replete with evidence concerning differences among the tart cherry producing districts. There are differences in yields; costs of production; the mix of cherry products made; the number of growers and processors; climate; swings in annual levels of production; age of orchards; proximity to different markets; and the quality of the cherries produced, among other things.

Proponents of a zero threshold continue to argue that all cherries in the production area should be regulated, no matter how small the crop. Even though evidence at the order promulgation hearing shows that it was the proponents' position that the minor production states have little bearing on the market, they now argue otherwise. Any threshold, in their opinion, creates a competitive advantage for those who are unregulated. However, based on the record, it is the Department's view that a production threshold is necessary to recognize the differences among varying districts. Proponents of the zero threshold failed to produce adequate evidence to change that view. Furthermore, the record does not demonstrate that the added costs of regulating all cherries would be exceeded by the benefits derived from doing so. For these reasons, the exceptions are denied.

Material Issue Number 2—Allocation of Board Membership

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 2 of the Recommended Decision (concerning whether changes should be made in allocation of Board membership and voting requirements) are amended by adding the following seven paragraphs to read as follows:

The exception filed by the Oregon Tart Cherry Association (OTCA) supported the concept of annual reallocation of Board membership based on each district's production. However, the exception asked that specific language be added to § 930.20 to require that this reallocation be implemented ''promptly,'' and not be delayed based on the expectation that a district's production level may change in the near future.

OTCA's comments regarding this issue are consistent with the intent of the changes proposed in the Recommended Decision. Therefore, § 930.23(f) is being changed to indicate that each district's 3-year average annual production would be recalculated annually. This would be done as soon as possible after each season's final production figures are known (typically in September). Any district meriting additional seats due to increasing production would have them filled during the next regularly scheduled round of nominations (generally held in January or February). Nominees to fill these additional seats would then be appointed by USDA to serve for the term of office beginning the following July 1. Likewise, any seats needing to be vacated due to a district's falling production would be vacated at the beginning of the next term of office (July 1). There is no provision in the proposed revision to § 930.20 to allow the annual reallocation of Board membership to be waived if there are expectations that changes in a district's production level are temporary in nature.

The Board's exception asked for clarification regarding the way in which it is determined which seats are to be vacated in the event a district's production declines and it is entitled to fewer positions. First, the Board took exception to an example given in the Recommended Decision that a district with three members would have two grower positions and one handler position. The Board pointed out that a district with three members would not necessarily have two grower and one handler positions, but could have one grower position and two handler positions instead. The Board's observation is correct. The example used in the Recommended Decision was for illustrative purposes and was not intended to suggest that a district entitled to three Board positions would always have two growers and one handler representing that district.

Second, the Board suggested that in determining which member should step down, the members representing the affected district should have the discretion in deciding. If that was not successful, rules and regulations governing this situation could be implemented. This is precisely what the Recommended Decision states.

The Board's exception also addressed the issue of filling a new seat when a district earns an additional Board representative due to higher production levels. In such an instance, the Board wants the members representing the district at the time the reallocation is made to be able to state whether they want to be considered as a grower or a handler member. This would be true regardless of which type of seat they were nominated and appointed to fill.

Under the provisions of the order, only growers may participate in nominating grower members to serve on the Board, and only handlers may nominate handler members. While it is true that some members may be both growers and handlers and may therefore be eligible to serve in either type of position, each member is nominated by a different group and appointed to represent that group. To illustrate, a person nominated by handlers in a district to represent them may not be acceptable to growers in that district to represent their interests (or vice versa). The Board's exception on this point is contrary to the nomination procedures contained in the order and is therefore denied.

Two exceptions expressed concern about the requirement that two-thirds of the Board's membership be required to vote in favor of any Board action. These two comments said it was unclear whether the two-thirds applied to total membership or only to the membership present at a given meeting. They objected to the latter scenario. The change proposed in the Recommended Decision intended that two-thirds of the total Board membership be required to approve any Board action (not two-thirds of those present). Thus, no changes are needed.

Material Issue Number 3—Board Designation of a Temporary Alternate To Act for an Absent Board Member

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 3 of the Recommended Decision (concerning added flexibility for alternates to serve for absent Board members) are amended by adding the following five paragraphs to read as follows:

Three exceptions were filed concerning this issue. One Washington grower supported USDA's recommendation in its entirety.

The OTCA supported allowing a member to designate an additional alternate to act in his or her stead when that member and that member's alternate are unable to attend a Board meeting. However, the OTCA opined that any such designated alternate should be required to be a grower or handler in the district he or she is designated to represent.

As discussed in the previous material issue, depending on a district's production, that district could be represented on the Board by one to four members. The OTCA proposal would not work in those districts with only one or two members (because any designated alternate would have to be from the same group—grower or handler). Thus, the OTCA revision would provide additional flexibility in

only some districts. This would be contrary to USDA's conclusion that maximum flexibility should be provided to all members to encourage a full complement of members at each Board meeting. However, it would remain the member's decision as to whether an additional alternate be designated in his or her stead. If a member were to determine that no one was available to adequately represent the interests of that member's constituency, the member could simply choose to leave his or her seat vacant. For these reasons, this exception is denied.

The Board took exception to USDA deleting the provision in its original proposal that if a member chose not to designate an additional alternate to act in his or her stead, the Board's Chairperson would have the authority to do so. The Board argued that the failure of a member to attend a meeting constituted a ''no'' vote on all matters acted on at the meeting, and would cause a district to be unrepresented at that meeting.

Board membership is allocated among the established districts to ensure that the varying interests of those districts are considered in Board deliberations. Further, quorum and voting requirements are set to encourage an industry consensus on program matters. The Board's recommendation is at odds with these objectives. Therefore, the Board's exception is denied.

Material Issue Number 4—Clarification of Diversion and Exemption Provisions

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 4 of the Recommended Decision (concerning clarification of diversion and exemption provisions) are amended by adding the following three paragraphs to read as follows:

The Board filed an exception suggesting a further clarification of the order's exemption and diversion provisions. Under both the handler diversion provision of the order (§ 930.59) and the exemption provision (§ 930.62) certain uses of cherries are listed that may be eligible for diversion or exemption. An example is that exports to designated markets may be eligible for diversion or exemption (subject to Board recommendation and USDA approval). In both sections of the order, in addition to the possible uses listed, authority is provided to give diversion credit or exempt use status for cherries used for other purposes recommended by the Board and approved by USDA.

The Board expressed concern that since the order's inception, USDA has interpreted the phrase ''other uses'' to mean only those uses that are very similar to those specifically listed. The Board wished to clarify its intention that this phrase be interpreted very broadly. As an illustration, the exception said there could be a case where destruction of an obsolete product should be eligible for diversion credit. While such a situation has not occurred in the past (and may not in the future), this example was used to illustrate the fact that the order needs to be flexible and adaptable to unforeseen situations that may arise in the future.

The Department finds the Board's comment has merit. The intent of the Recommended Decision was to provide such flexibility in the exemption and diversion provisions of the order. Any use authorized for such purposes would need to be recommended by the Board (and supported by sufficient economic justification) and approved by USDA through the informal rulemaking process.

Material Issue Number 6—Diversion Credit for Juice and Juice Concentrate

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 5 of the Recommended Decision (concerning exemption or diversion credit for export shipments) are amended by adding the following two paragraphs to read as follows:

The Board filed an exception suggesting a clarification of the proposal to allow diversion credit for juice and juice concentrate sold in outlets approved for diversion credit. The Board pointed out that the Recommended Decision used as an example juice and concentrate shipped to approved export markets, and wanted to clarify that juice and juice concentrate used for any approved diversion outlet (not just exports) be eligible to receive diversion credit.

The Department accepts the Board's suggestion. While it is true that the discussion of this issue in the Recommended Decision focused on export shipments, it was not intended that diversion credits for juice be limited only to export shipments. The use of juice or juice concentrate in any outlet approved under § 930.59 would be eligible for diversion credit.

Material Issue Number 7—Handler Transfers of Diversion Credits

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 7 of the Recommended Decision (concerning handler transfers of diversion credits) are amended by adding the following two paragraphs to read as follows:

An exception to this issue was filed by a Michigan cherry grower. While he supported the concept of handler transfers of diversion credits, he suggested that only handlers who do not ''force'' their growers to divert cherries in-orchard should be eligible for such transfers. His point was that growers do not have the option of diverting cherries; rather, their handlers require them to do so. In such instances, handlers should not be able to market a greater percentage of their acquired cherries through transfers of diversion credits.

Under the terms of the marketing order, grower diversions are voluntary. Any negotiations between a grower and his or her handler fall beyond the scope of the order. Thus, this exception is denied.

Material Issue Number 9—Release of Cherries in Inventory Reserve

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 9 of the Recommended Decision (concerning the release of cherries in the inventory reserve) are amended by adding the following two paragraphs to read as follows:

A Michigan grower filed an exception to this provision. He suggested that handlers be required to compensate growers for any cherries that are released from the inventory reserve. He stated that growers receive a different price for free percentage cherries and restricted percentage cherries, with the latter receiving far less than the former. When restricted percentage cherries placed in the inventory reserve are subsequently released from the reserve and become free percentage cherries, growers do not necessarily receive anything additional for those cherries.

The issue of pricing reserve pool cherries was not explored at the hearing and is outside the scope of this rulemaking. Thus, this exception must be denied.

Material Issue Number 12—Uniform Assessment Rate

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 12 of the Recommended Decision (concerning a uniform assessment rate) are amended by adding the following two paragraphs to read as follows:

Two exceptions were filed regarding this material issue. A Washington grower stated that a lower assessment rate for cherries used for juice concentrate remains justified because

such cherries return far less to growers than cherries used for other purposes. The OTCA also objected, because it believed the Board should be required to consider various criteria (such as relative market values of different products) in recommending appropriate assessment rates.

To clarify the change proposed in the Recommended Decision, the Department is not suggesting that the Board disregard the criteria listed in § 930.41 when recommending assessment rates. Different assessment rates, while not being required, shall be considered by the Board.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled ''Order Amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin is approved or favored by growers and processors, as defined under the terms of the order, who during the representative period were engaged in the production or processing of tart cherries in the production area.

The representative period for the conduct of such referendum is hereby determined to be June 1, 2000, through May 31, 2001.

The agent of the Secretary to conduct such referendum is hereby designated to be Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, Unit 155, Suite 2A04, Riverdale, Maryland 20737; telephone (301) 734–5243.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

Dated: May 3, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin [1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of tart cherries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

(5) All handling of tart cherries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Administrator on January 15, 2002, 1999, and published in the **Federal Register** on January 24, 2002, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Amend § 930.20 as follows:

a. By revising paragraphs (a), (b), (d) and (e);

b. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h); and

c. Adding new paragraphs (f) and (i).

The additions and revisions read as follows:

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Industry Administrative Board, the membership of which shall be calculated in accordance with paragraph (b) of this section. The number of Board members may vary, depending upon the production levels of the districts. All but one of these members shall be qualified growers and handlers selected pursuant to this part, each of whom shall have an alternate having the same qualifications as the member for whom the person is an alternate. One member of the Board shall be a public member who, along with his or her alternate,

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

shall be elected by the Board from the general public.

(b) District representation on the Board shall be based upon the previous three-year average production in the district and shall be established as follows:

(1) Up to and including 10 million pounds shall have 1 member;

(2) Greater than 10 and up to and including 40 million pounds shall have 2 members;

(3) Greater than 40 and up to and including 80 million pounds shall have 3 members; and

(4) Greater than 80 million pounds shall have 4 members; and

(5) Allocation of the seats in each district shall be as follows but subject to the provisions of paragraphs (d), (e) and (f) of this section:

District type	Grower members		Handler members
Up to and including 10 million pounds ..	1	OR	1
More than 10 and up to 40 million pounds	1		1
More than 40 and up to 80 million pounds	1		2
More than 80 million pounds	2		2

* * * * *

(d) The ratio of grower to handler representation in districts with three members shall alternate each time the term of a Board member from the representative group having two seats expires. During the initial period of the order, the ratio shall be as designated in paragraph (b) of this section.

(e) Board members from districts with one seat may be either grower or handler members and will be nominated and elected as outlined in § 930.23.

(f) If the 3-year average production of a district changes so that a different number of seats should be allocated to the district, then the Board will be reestablished by the Secretary, and such seats will be filled according to the applicable provisions of this part. Each district's 3-year average production shall be recalculated annually as soon as possible after each season's final production figures are known.

* * * * *

(i) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

3. Revise § 930.28 to read as follows:

§ 930.28 Alternate members.

An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event a member and his or her alternate are absent from a meeting of the Board, such member may designate, in writing and prior to the meeting, another alternate to act in his or her place: *Provided,* that such alternate represents the same group (grower or handler) as the member. In the event of the death, removal, resignation or disqualification of a member, the alternate shall act for the member until a successor is appointed and has qualified.

4. Amend § 930.32 by revising paragraph (a) to read as follows:

§ 930.32 Procedure.

(a) Two-thirds of the members of the Board, including alternates acting for absent members, shall constitute a quorum. For any action of the Board to pass, at least two-thirds of the entire Board must vote in support of such action.

* * * * *

5. Amend § 930.41 by revising paragraphs (c) and (f) to read as follows:

§ 930.41 Assessments.

* * * * *

(c) As a pro rata share of the administrative, inspection, research, development, and promotion expenses which the Secretary finds reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided,* a handler shall be exempt from any assessment only on the tonnage of handled cherries that either are diverted by destruction at the handler's facilities according to § 930.59 or are cherries represented by grower diversion certificates issued pursuant to § 930.58(b) and acquired by handlers as described in § 930.59.

* * * * *

(f) Assessments shall be calculated on the basis of pounds of cherries handled. The established assessment rate may be uniform, or may vary dependent on the product the cherries are used to manufacture. In recommending annual assessment rates, the Board shall consider:

(1) The differences in the number of pounds of cherries utilized for various cherry products; and

(2) The relative market values of such cherry products.

* * * * *

6. Amend § 930.50 by revising paragraphs (a), (b) and (g) to read as follows:

§ 930.50 Marketing policy.

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years reduced by average sales that represent dispositions of exempt cherries and restricted percentage cherries qualifying for diversion credit for the same three years, unless the Board determines that it is necessary to recommend otherwise with respect to sales of exempt and restricted percentage cherries, to which shall be added a desirable carry-out inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: From the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carry-in inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be subtracted from the current year USDA crop forecast or by an average of such other crop estimates the Board votes to use. If the resulting number is positive, this would represent the estimated overproduction which would be the restricted tonnage. This restricted tonnage would then be divided by the sum of the crop forecast(s) for the regulated districts to obtain a preliminary restricted percentage, rounded to the nearest whole number, for the regulated districts. If subtracting the current crop year requirement, computed in the first sentence from the current crop forecast, results in a negative number, the Board shall establish a preliminary free market tonnage percentage of 100 percent with a preliminary restricted percentage of zero. The Board shall announce these preliminary percentages in accordance with paragraph (h) of this section.

* * * * *

(g) *Additional tonnage to sell as free tonnage.* In addition, the Board, in years when restricted percentages are established, shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years, as defined in paragraph (a) of this section, for market expansion.

* * * * *

7. Amend § 930.51 by revising paragraph (c) to read as follows:

§ 930.51 Issuance of volume regulations.

* * * * *

(c) That portion of a handler's cherries that are restricted percentage cherries is the product of the restricted percentage imposed under paragraph (a) of this section multiplied by the tonnage of cherries, originating in a regulated district, handled, including those diverted according to § 930.59, by that handler in that fiscal year.

* * * * *

8. Amend § 930.52 by revising paragraph (a) to read as follows:

§ 930.52 Establishment of districts subject to volume regulation.

(a) The districts in which handlers shall be subject to any volume regulations implemented in accordance with this part shall be those districts in which the average annual production of cherries over the prior 3 years has exceeded 6 million pounds. Handlers shall become subject to volume regulation implemented in accordance with this part in the crop year that follows any 3-year period in which the 6-million pound average production requirement is exceeded in that district.

* * * * *

9. Revise § 930.54 to read as follows:

§ 930.54 Prohibition on the use or disposition of inventory reserve cherries.

Cherries that are placed in inventory reserve pursuant to the requirements of § 930.50, § 930.51, § 930.55, or § 930.57 shall not be used or disposed of by any handler or any other person except as provided in § 930.50 or in paragraphs (a), (b), or (c) of this section.

(a) If the Board determines that the total available supplies for use in commercial outlets are less than the amount needed to meet the demand in such outlets, the Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for such use.

(b) The Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for sale in certain designated markets. Such designated markets may be defined in terms of the use or form of the cherries.

(c) Cherries in the primary and/or secondary inventory reserve may be used at any time for uses exempt from regulation under § 930.62.

10. Amend § 930.58 by revising paragraph (a) to read as follows:

§ 930.58 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler, as though there were actual harvested cherries. Any grower diversions completed in accordance with this section, but which are undertaken in districts subsequently exempted by the Board from volume regulation under § 930.52(d), shall qualify for diversion credit.

* * * * *

11. Revise § 930.59 to read as follows:

§ 930.59 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Upon voluntary diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any form which the Board, with the approval of the Secretary, may designate. Tart cherry juice and juice concentrate may receive diversion credit but only if diverted in forms approved under the terms of this section. Such forms may include, but are not limited to:

(1) Contribution to a Board-approved food bank or other approved charitable organization;

(2) Use for new product and new market development;

(3) Export to designated destinations; or

(4) Other uses or disposition, including destruction of the cherries at the handler's facilities.

(c) *Notification.* The handler electing to divert cherries through means authorized under this section shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision may be established by the Board, pursuant to rules and regulations approved by the Secretary.

(d) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries under paragraph (c) of this section as may be necessary to assure that the cherries are diverted as authorized. After the diversion has been completed, the Board shall issue to the diverting handler a handler diversion certificate indicating the weight of cherries which may be used to offset any restricted percentage requirement.

(e) *Transfer of certificates.* Within such restrictions as may be prescribed in rules and regulations, including but not limited to procedures for transfer of diversion credit and limitations on the type of certification eligible for transfer, a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers. The Board must be notified in writing whenever such transfers take place during a crop year.

(f) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

12. Revise § 930.62 to read as follows:

§ 930.62 Exempt uses.

(a) The Board, with the approval of the Secretary, may exempt from the provisions of § 930.41, § 930.44, § 940.51, § 930.53, or § 930.55 through § 930.57 cherries for designated uses. Such uses may include, but are not limited to:

(1) New product and new market development;

(2) Export to designated destinations;

(3) Experimental purposes; or

(4) For any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

(b) The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

(c) Diversion certificates shall not be issued for cherries which are used for exempt purposes; *Provided,* that growers engaging in such activities under the authority of § 930.58 shall be issued diversion certificates for such activities.

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Federal Register

Friday,
May 10, 2002

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Reduced Vertical Separation Minimum in Domestic United States Airspace; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2002–12261; Notice No. 02–09]

RIN 2120–AH63

Reduced Vertical Separation Minimum in Domestic United States Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to permit Reduced Vertical Separation Minimum (RVSM) flights in the airspace over the contiguous 48 States of the United States (U.S.) and Alaska and that portion of the Gulf of Mexico where the FAA provides air traffic services. The RVSM program would allow the use of reduced vertical separation between aircraft at certain altitudes. This reduction of vertical separation minima would only be applied between those aircraft that meet stringent altimeter and auto-pilot performance requirements. This proposed rule would also require any aircraft that is equipped with Traffic Alert and Collision Avoidance System version II (TCAS II) and flown in RVSM airspace to incorporate a version of TCAS II that is compatible wit RVSM operations. The FAA is proposing this action to enhance airspace capacity and to assist aircraft operators to save fuel and time.

DATES: Comments must be submitted on or before August 8, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–XXXXX at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Docket Office between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Roy Grimes, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 600 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3734.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this proposed rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy of this copy through in Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at *_http://www.faa.gov/avr/armhome.htm* or the Federal Register's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Why RVSM Implementation in US and Gulf of Mexico Airspace Is Warranted: Benefits, Proven Safety, Existing Aircraft Eligibility

Statement of the Problem

Air traffic levels were reduced following the events of September 11, 2001. The FAA anticipates, however, that over the next 12–18 months, air traffic will resume the steady increase that has been exhibited in past years. Air traffic at FAA air route traffic control centers is projected to increase over the next ten years at an average annual rate of 1.5 percent. By 2012, FAA air route traffic control centers are projected to be required to manage approximately 9 million more instrument flight rule (IFR) flights than they did in 2000 (55.0 million versus 46.0 million).

As air traffic increases, the opportunity for aircraft to fly the desired time and fuel-efficient flight levels and routes will be significantly diminished. In addition, traffic increases will diminish the capability of the FAA to move aircraft through and around areas affected by significant weather systems. In areas characterized by high-density traffic, the FAA may be required to invoke restrictions that can result in traffic delays and fuel penalties.

National Airspace System Operational Evolution Plan (NAS OEP) Initiatives

In 2001, the FAA began a focused study of initiatives to enhance the efficiency and reliability of air traffic operations in the NAS. This study and inputs from the airspace user community has led the FAA to pursue a variety of options and initiatives to enhance airport capacity and arrival, approach, and enroute operations. The initiatives and FAA plans to pursue them are published in the NAS OEP.

The website address for this document is: *www.faa.gov/programs/oep.*

The FAA believes that the option to implement RVSM in the NAS should be a high priority initiative because RVSM has proven over the past several years to provide significant enhancements to enroute operations in other areas. The RVSM implementation project is listed in the Enroute Congestion Solutions section of the NAS OEP.

Advocacy by User Groups

Organizations and representatives from the aviation community have advocated the implementation of RVSM in U.S. and Gulf of Mexico airspace. The U.S. operators view RVSM as a proven operational program that can mitigate some of the problems encountered in U.S. domestic operations.

RVSM Mitigation of Air Traffic Management Problems

The explanation of the term ''flight levels (FL)'' in this paragraph is provided to introduce the discussion of RVSM benefits below. Flight levels are stated in three digits that represent thousands of feet. The term flight level is used to describe a surface of constant atmospheric pressure related to a reference datum of 29.92 inches of mercury. Flight levels are separated by specific pressure intervals. Rather than adjusting altimeters for changes in atmospheric pressure, pilots base altitude readings above the transition altitude (18,000 feet in the United States) on this standard reference. Thus FL 290 represents the pressure surface equivalent to 29,000 feet based on the 29.92″ Hg datum; FL 310 represents 31,000 feet, and so on.

With air traffic levels increasing annually, FAA airspace planners and their international counterparts have established programs to implement RVSM as a primary measure to enhance air traffic management and operating efficiency. RVSM has been successfully implemented in both oceanic and continental airspace. The RVSM program has been implemented in oceanic airspace in the North and South Atlantic, the Pacific, the South China Sea, and in the portion of the West Atlantic Route System (WATRS) that is in the New York Oceanic Flight Information Region (FIR). The RVSM program has also been implemented in the continental airspace of Australia and Europe.

The RVSM program allows the vertical separation standard that is applied below FL 290 to be applied between FL 290 and 410. Below FL 290 (29,000 feet), air traffic controllers can assign Instrument Flight Rules (IFR) aircraft to flight levels that are separated by 1,000 feet. Above FL 290, however, the Conventional Vertical Separation Minimum (CVSM) is 2,000 feet and IFR aircraft must be assigned to FL's separated by 2,000 feet.

The 2,000-foot minimum vertical separation restricts the number of flight levels available. Flight levels 310, 330, 350, 370, and 390 are flight levels at which aircraft operate most economically. During peak periods, these FL's can become congested. When all RVSM FL's (FL 290–410) are utilized, six additional flight levels are available: FL's 300, 320, 340, 360, 380, and 400. Increasing the number of FL's available in the U.S. domestic airspace is projected to provide enhancements to aircraft operations similar to those gained in the North Atlantic (NAT) and Pacific (PAC) (i.e., mitigation of fuel penalties attributed to the inability to fly optimum altitudes and tracks and enhanced controller flexibility for air traffic management).

Benefits and Enhancements

Implementation of a 1,000-foot vertical separation standard above FL 290 offers substantial operational benefits to operators, including:

- Greater availability of the most fuel-efficient altitudes. In the RVSM environment, aircraft are more likely to receive their requested altitude enabling them to consistently fly closer to their most fuel efficient FL.
- Greater availability of the most time and fuel-efficient routes (and an increased probability of obtaining these routes). Operators may not be cleared on the route that was filed due to demand for the optimum routes and resultant traffic congestion on those routes. The RVSM program allows the FAA to accommodate a greater number of aircraft on a given track or route. More time and fuel-efficient tracks or routes would therefore be available to more aircraft.
- Increased air traffic controller flexibility. The RVSM program gives the FAA greater flexibility to manage traffic by increasing the number of flight levels available on each track or route. This enhanced flexibility is especially desirable in situations where the FAA must re-route traffic around weather.
- Reduction of air traffic controller workload. The enhanced flexibility described above will reduce controller workload and allow them to work more efficiently.
- Enhanced flexibility to allow aircraft to cross intersecting routes. The RVSM program makes more flight levels available to enable aircraft to cross intersecting flight paths above or below conflicting traffic.
- Enhanced safety in the application of separation standards. Studies show that the RVSM program produces a wider distribution of aircraft among different routes and altitudes.

Example of RVSM Benefits to NAT Operations

Over the past five years, the FAA and the other NAT Air Traffic Service Providers have observed significant benefits provided by RVSM implementation in NAT airspace. Prior to the introduction of RVSM, 27 percent of flights in NAT airspace were issued clearances on tracks and at altitudes other than the optimum tracks and altitudes requested by the operators in their filed flight plans. These flights were, therefore, generally subject to time and fuel penalties.

The NAT Implementation Management Group (IMG) (of which the FAA is a member) observed the following improvements in NAT operations due to the introduction of RVSM:

1. Fifty percent of the fuel penalty attributed to NAT system operation was eliminated. The total NAT system fuel penalty is estimated based on track design, meteorological forecast, cruise level, and traffic congestion penalties.
2. Twenty five percent fewer fixed tracks were required to be published. This allows more airspace for operators to fly preferred tracks.
3. There was a five percent increase in flights cleared to fly at both the altitude and on the track that the operator requested.

Aircraft Operating in U.S. Airspace Already Approved for RVSM

Approximately twenty-two percent of flights in U.S. airspace are already conducted by aircraft that have been approved for RVSM operations. Approximately 2,600 aircraft of U.S. registry have already been FAA-approved for RVSM operations under the existing RVSM regulation. Many U.S. operators have obtained RVSM approval for these aircraft so they can be flown in airspace outside the U.S. where RVSM has been implemented. Aircraft that have been approved for RVSM are currently approved for RVSM operations in any area of the world where RVSM is applied.

Developing of RVSM Programs

Rising traffic volume and fuel costs, which made flight at fuel-efficient altitudes a priority for operators, sparked an interest in the early 1970's in implementing RVSM above FL 290.

In April 1973, the Air Transport Association of America (ATA) petitioned the FAA for a rule change to reduce the vertical separation minimum to 1,000 feet for aircraft operating above FL 290. The petition was denied in 1977 in part because (1) aircraft altimeters had not been improved sufficiently, (2) improved maintenance and operational standards had not been developed, and (3) altitude correction was not available in all aircraft. In addition, the cost of modifying nonconforming aircraft was prohibitive. The FAA concluded that granting the ATA petition at that time would have adversely affect safety.

Forums for Development of RVSM Policy and Procedures

The FAA recognized, however, the potential benefits of RVSM and in the 1980's, focused its efforts and resources on establishing the criteria and policies that would allow RVSM to be implemented safely. In conjunction with this effort, the FAA also considered the economic feasibility of RVSM. These efforts were considered in the following national and international forums.

1. FAA Vertical Studies Program. This program began in mid-1981, with the objectives of collecting and analyzing data on aircraft performance in maintaining assigned altitude, developing program requirements to reduce vertical separation, and providing technical and operational representation on the various working groups studying the issue outside the FAA.

2. RTCA Special Committee (SC)–150. RTCA, Inc., (formerly Radio Technical Commission for Aeronautics) is an industry organization in Washington, D.C., that addresses aviation technical requirements and concepts and produces recommended standards. When the FAA hosted a public meeting in early 1982 on vertical separation, it was recommended that RTCA be the forum for development of minimum system performance standards for RVSM. RTCA SC–150 served as the focal point for the study and development of RVSM criteria and programs in the United States from 1982 to 1987, including analysis of the results of the FAA Vertical Studies Program.

3. International Civil Aviation Organization (ICAO) Review of the General Concept of Separation Panel (RGCSP). In 1987, the FAA concentrated its resources for the development of RVSM programs in the ICAO RGCSP. The U.S. delegation to the ICAO RGCSP used the material developed by RTCA SC–150 as the foundation for U.S. positions and plans on RVSM criteria and programs. The panel's major conclusions were:

- RVSM is technically feasible without imposing unreasonably demanding technical requirements on the equipment.
- RVSM provides significant benefits in terms of economy and enroute airspace capacity.
- Implementation of RVSM on either a regional or global basis requires sound operational judgment supported by an assessment of system performance based on: Aircraft altitude-keeping capability, operational considerations, system performance monitoring, and risk assessment.

The RGCSP developed the ICAO Manual on Implementation of a 300-meter (1,000-foot) Vertical Separation Minimum Between FL 290 and FL 410 (inclusive) (ICAO Document 9574) that was published in 1992. This document provided the FAA with the basis for: The development of detailed aircraft and operator approval documents, planning for required RVSM implementation tasks, and developing programs to monitor aircraft performance and system safety.

4. *North Atlantic System Planning Group (NATSPG) and the NATSPG Vertical Separation Implementation Group (VSIG).*

After developing and reviewing cost/benefit studies, the NATSPG (of which the FAA is a member) concluded in 1991 that RVSM should be implemented in North Atlantic Minimum Navigation Performance Specification airspace and that working groups and programs should be established to implement it in 1996–1997. The NATSPG, thus, became the first ICAO regional group to develop the technical and operational programs to implement RVSM.

To pursue implementation, the NATSPG established the VSIG in June 1991 to take the necessary actions to implement RVSM in the NAT. These actions included:

- Aircraft and Operator Approval. The Operations and Airworthiness Group (chaired by the FAA) developed a detailed document containing the criteria and process to approve aircraft and operators for RVSM operations. The document addressed issues related to aircraft airworthiness, maintenance, and operations. The ICAO regional implementation groups and civil aviation authorities world-wide have adopted this document as the basis for aircraft airworthiness and operations programs.
- Safety Analysis and Monitoring Aircraft Altitude-keeping performance. The VSIG provided the forum to develop criteria and process for safety analysis and for the development and use of two different, but complementary, monitoring systems to assess aircraft altitude-keeping in-service performance. These systems are the ground-based Height Monitoring Unit (HMU) and the Global Position System Monitoring System (GMS). The NATSPG used these systems to observe the performance of individual airframes and groups of aircraft with the objective of confirming that the approval process was uniformly effective and that the airspace system was safe.
- Air Traffic Policy and Procedures. The NATSPG Air Traffic Management Group developed ATC procedures for RVSM, conducted simulation studies to assess the effect of RVSM on ATC, and developed documents to address ATC issues.

Policy, procedures and documents developed in the NATSPG forum are used as the basis for RVSM program implementation worldwide.

Safety Observed in RVSM Operations

Application of 1,000-foot Vertical Separation Below FL 290. Before discussing the safety observed in the application, over the past several years, of 1,000-foot vertical separation at and above FL 290, it is important to note that 1,000-foot vertical has been applied safety below FL 290 for over 40 years. The 1,000-foot vertical separation of aircraft below FL 290 is an ICAO separation standard and since the 1960's, it has been applied below FL 290 worldwide, including in the U.S. The RVSM program enables the use of 1,000-foot vertical separation to be expanded above FL 290 to FL 410.

Existing and Proposed Regulations: Criteria for Aircraft and Operator Approval

Part 91, § 91.706 (Operations within airspace designated as Reduced Vertical Separation Minimum Airspace) and part 91, Appendix G (Operations in Reduced Vertical Separation Minimum (RVSM) Airspace) contain the FAA requirements for aircraft and operator approval for RVSM operations outside the U.S. They have been applied to operations outside the U.S. since they were published in April of 1997. A major objective of the proposed part 91 amendment is to add § 91.180 (Operations Within Reduced Vertical Separation Minimum Airspace in the United States) to make the standards of Appendix G applicable to RVSM operations within the U.S.

The aircraft and operator approval requirements published in part 91, Appendix G, and European Joint Airworthiness Authorities (JAA) RVSM documents was developed in a joint

FAA/JAA working group. In that group, technical and operational experts from the FAA, the European Joint Airworthiness Authorities (JAA), the aircraft manufacturers, and pilot associations developed detailed criteria and procedures for RVSM approval using the ICAO RVSM Manual (Doc 9574) as the starting point. These FAA and JAA regulations and standards have been used worldwide for RVSM aircraft and operator approval.

Section 91.706 requires that aircraft and operators meet the standards of Appendix G and receive authorization from the Administrator prior to flying in airspace where RVSM is applied. Appendix G contains requirements in eight sections:

1. Definitions
2. Aircraft Approval
3. Operator Authorization
4. RVSM operations (flight planning into RVSM airspace)
5. Deviation Authority Approval
6. Reporting Altitude-keeping Errors
7. Removal or Amendment of Authority
8. Airspace Designation

The criteria and procedures published in FAA Appendix G and in JAA and ICAO documents have produced aircraft performance that is significantly better than the minimum required for safety in the ICAO RVSM Manual.

Observed Altitude-Keeping Performance

For the past several years, the FAA, in conjunction with the NATSPG, has evaluated (or monitored) the altitude-keeping performance of RVSM approved aircraft. The GMS and the ground-based HMU have been used to observe aircraft performance in both oceanic and continental airspace.

Altimeter system error (ASE) is the major component of aircraft altitude-keeping performance. The ASE is the difference between the pressure altitude displayed on the altimeter (assuming a correct altitude barometric setting) and the true pressure altitude.

Measurements have shown that the altitude-keeping performance of the population of aircraft approved for RVSM operations is significantly better than the minimum requirement established by the ICAO RGCSP in the ICAO RVSM Manual. The ICAO RVSM Manual calls for average or mean ASE for groups of aircraft not to exceed 80 feet and 99.9% of ASE measurements not to exceed 245 feet. To date, over 120,000 measurements of ASE taken for approximately 6,000 airframes has shown that the observed average ASE is −4.69 feet and 99.9% of ASE is within approximately 165 feet.

RVSM Safety Analysis

Over the past several years, the on-going assessment of RVSM risk in various areas worldwide has shown that operational safety is maintained. All sources of aircraft, pilot, and controller error in RVSM operations have been assessed using safety analysis processes. The FAA and other civil aviation authorities have concluded that RVSM operations are safe.

Proposed Implementation Plans and Schedules

Domestic RVSM (DRVSM) Implementation Team

The FAA has established a Domestic RVSM Implementation Team to develop U.S. Domestic RVSM implementation plans and programs. It is the objective of the FAA team to develop and coordinate the DRVSM program and to complete the necessary tasks to implement RVSM in U.S. and Gulf of Mexico airspace.

Proposed DRVSM Implementation Plan

The FAA proposes to implement DRVSM in the airspace of the continguous 48 states, Alaska and Gulf of Mexico airspace where the FAA provides air traffic service in December of 2004 between FL 290–410 (inclusive). When DRVSM is implemented, with limited exceptions described below, to fly in that airspace, civil operators and aircraft must comply with the standards of part 91 Appendix G and the operator must be authorized by the Administrator or, if a foreign operator, the country of registry to conduct RVSM operations. Implementing DRVSM in this manner enhances safety by requiring the aircraft/operator population to be approved to common standards, thus, enabling controllers to apply, in normal operations, a single vertical separation standard. It also enables a significant majority of operators to consistently flight plan, fuel plan and fly RVSM FL's and, therefore to maximize RVSM benefits.

In accordance with Appendix G, Section 5 (Deviation Authority Approval), the FAA proposes to allow the following exceptions to RVSM standards for civil aircraft operating in DRVSM airspace:

- The FAA will accommodate unapproved aircraft conducting air ambulance flights using a Lifeguard call sign as described in the Aeronautical Information Manual.
- Unapproved aircraft may be allowed to climb through RVSM FL's to operate above RVSM airspace at FL 430 and above, traffic permitting.

When such aircraft operate in RVSM aircraft, their lack of RVSM approval status will be displayed to FAA controllers and 2,000-foot vertical or the appropriate lateral or longitudinal separation standard will be applied to them.

Factors Considered in Developing the Implementation Plan

In proposing a FL stratum and implementation date, the FAA has considered the following factors:

- Feasibility of phased implementation
- Timeframe for significant majority of flights to be conducted by approved aircraft
- Justification to avoid further delay of RVSM benefits
- Capability and timeframe for the majority of operators and aircraft to obtain approval
- Options for unapproved aircraft to continue to operate

These implementation factors are discussed below:

Phased implementation. The FAA does not consider phased implementation to be feasible. Prior to reaching this conclusion, the FAA conducted real-time simulations at the William J. Hughes Technical Center to assess the feasibility of implementing RVSM initially between FL 350–390 or between 330–390. In the simulations of these implementation scenarios, the FAA analyzed controller workload, the potential for controller error and the impact on airspace complexity. Observations were made of qualified FAA controllers managing representative air traffic flows in three RVSM airspace scenarios: FL 350–390, FL 350–390, and FL 290–410. The FAA concluded that the FL 290–410 implementation scenario offered significant advantages in that it provided reductions in controller workload, airspace complexity and potential for error. Controllers were required to vector aircraft significantly less frequently and required coordination between air route centers was significantly reduced.

Timeframe for a significant majority of flights to be conducted by RVSM approved aircraft. In preparation for RVSM implementation, the FAA has worked with U.S. operators to establish a timeframe when a significant majority of flights would be conducted by RVSM approved aircraft. The FAA conducted a survey of U.S. operators to determine their plans to schedule and complete RVSM aircraft engineering tasks. The FAA found that many U.S. aircraft and operators have already obtained RVSM approval in order to operate in RVSM

airspace outside the U.S. In addition, anticipating DRVSM implementation, many operators are planning for completion of RVSM engineering work in late 2004. A significant motivation noted was the desire to accomplish RVSM aircraft work during scheduled maintenance checks to avoid costs associated with special inspections outside the normal maintenance cycle.

The FAA used the operator survey information in combination with data obtained from the Enhanced Traffic Management System (ETMS) to project the percentage of flights to be conducted in domestic airspace in December of 2004 by individual aircraft types. The FAA has projected that by December of 2004 over 90% of flights conducted between FL 290–410 will be conducted by RVSM approved aircraft.

Justification to avoid further delay. The FAA believes that further delay beyond December 2004 would result in an unwarranted loss of benefits. Based on the enhanced capability for aircraft to operate at more fuel-efficient altitudes, the FAA has projected $388 million dollars in fuel savings for the period from December 2004 through calendar year 2005, assuming DRVSM is implemented in December 2004. In addition, as noted previously, the FAA has projected that the addition of six FL's between FL 290–410 would significantly enhance controller flexibility to manage traffic in situations such as weather re-routes and increase the number of aircraft that can traverse a sector. These benefits would be lost if implementation were delayed.

Capability for operators to obtain aircraft approval. First, aircraft certification authorities have approved RVSM aircraft engineering packages for all major aircraft types used in either airline or general aviation operations. Second, Appendix G provides operators with the option of obtaining approval for their aircraft in a non-group or individual airframe status. Third, the FAA is working with Aircraft Service Centers and other organizations that provide RVSM engineering service, as well as operator organizations, to standardize and clarify the aircraft approval process, as necessary. In addition, the FAA will conduct RVSM seminars and enhance the FAA RVSM information network to ensure that operators have ready access to information on the RVSM approval process.

Options for unapproved aircraft to continue to operate. Operators unable or unwilling to obtain RVSM approval for their aircraft by the proposed December 2004 implementation date would still be able to operate at and below FL 280. The FAA recognizes that aircraft operating at and below FL 280 would not be operating at fuel-efficient altitudes. In addition, aircraft that can operate at and above FL 430 would be allowed to climb through to operate above RVSM airspace, traffic permitting. Finally, the FAA will plan to accommodate civilian air ambulance flights conducted by unapproved aircraft operating under a ''Lifeguard'' call sign. (Guidance on Lifeguard flights is published in the Aeronautical Information Manual).

Specific Airspace Issues

Coordination with Mexico and Canada. The FAA has established contact with representatives from the civil aviation authorities of Canada and Mexico and is coordinating RVSM implementation plans with them. Canadian representatives have informed the FAA that RVSM will be implemented in Northern Canadian Domestic airspace in April 2002, and Canada is planning to implement RVSM implementation in Canadian Southern Domestic airspace at the time that it is implemented in the U.S.

Gulf of Mexico Airspace. The airspace in the Gulf of Mexico for which the FAA provides air traffic services has been included in this proposal. The regulations, at 14 CFR 71.33(c), already designate portions of Houston and Miami Oceanic and Jacksonville Offshore Airspace as Class A airspace ''within which domestic ATC procedures are applied.'' The offshore airspace is treated in the regulations as an extension of the Class A airspace of the continental U.S. In addition, certain routes where RVSM is proposed begin in continental U.S. airspace, cross the Gulf of Mexico and then re-enter continental airspace on the other side. Inclusion of Gulf of Mexico airspace in the proposal will mitigate unwarranted air traffic management complexity and contribute to maximizing benefits to the operators.

Hawaiian Airspace. The airspace of the Hawaiian Islands is surrounded by Pacific Oceanic RVSM airspace. RVSM approved aircraft operate to and from Hawaiian airspace, however, there is currently no plan to require RVSM approval for all aircraft to operate within that airspace. Instead, 1,000-foot vertical separation is applied between FL 290–410 when two passing aircraft are both RVSM approved and 2,000-foot vertical or horizontal separation is applied if either of the passing aircraft is not RVSM approved.

Exploration of Tactical RVSM

The FAA is exploring allowing controllers to apply ''tactical RVSM'' prior to the proposed DRVSM implementation date of December 2004. Prior to December 2004, RVSM approval would not be mandatory for operation in U.S. domestic airspace. Application of tactical RVSM would allow controllers to use 1,000-foot vertical separation between FL 290–410, at controller's discretion, if both passing aircraft are RVSM approved. In this situation, the approval status would be displayed to the controller. This provision has been used successfully in Europe since April 2001.

DRVSM Aircraft and Operator Approval Factors

The intent of this rulemaking is to expand the application of the RVSM aircraft and operator approval requirements to all aircraft operating in the U.S. and Gulf of Mexico airspace. Currently, 14 CFR 91.706 addresses RVSM operations for U.S. registered civil aircraft outside of the U.S. The FAA proposes to locate new RVSM § 91.180 in part 91, subpart B (Flight Rules). Section 91.180 would, therefore, apply to RVSM operations conducted in the NAS. The new section instructs domestic operators and their aircraft to comply with part 91, Appendix G and obtain an authorization from the Administrator prior to conducting RVSM operations. In addition, proposed § 91.180 would provide that foreign operators and their aircraft would comply with appendix G and be authorized by the country of registry prior to conducting flight in RVSM airspace of the U.S.

Eligibility of Aircraft Approved for RVSM Operations Outside the U.S. Aircraft that have already received RVSM airworthiness approval in accordance with Appendix G that have been used in RVSM operations outside the U.S. are eligible for RVSM operations within the NAS. Prior to conducting NAS RVSM operations, however, operators will be required to adopt RVSM operational policies and procedures unique to the U.S. for pilots and, if applicable, dispatchers.

TCAS II Version 7.0 Requirement. A significant majority of the aircraft that operate in the domestic U.S. at and above flight level 290 area already required to be equipped with TCAS II, Version 6.04a. Requirements for aircraft TCAS equipage are published in 14 CFR parts 121, 125, 129 and 135. Approximately 85% of domestic operations above FL 290 are conducted by large jet aircraft operating under parts 121 or 129. These parts call for aircraft equipage with an approved TCAS II if the aircraft has seating capacity of more than 30 seats. FAA

Airworthiness Directives published in 1994 mandate TCAS II, Version 6.04a for TCAS II installations.

Part 91, appendix G, section 2, paragraph (g) states that ''after March 31, 2002, unless otherwise authorized by the Administrator, if you operate an aircraft that is equipped with TCAS II in RVSM airspace, it must be a TCAS II that meets TSO C–119b (Version 7.0), or a later version.'' This provision was adopted because Version 7.0 incorporates Traffic Alert and Resolution Advisory thresholds that mitigate unnecessary alerts when 1,000-foot vertical separation is applied above FL 290. Version 7.0 generally requires a software modification that is not a major system modification. The cost for this modification has been accounted for in the cost-benefit analysis. Operators of aircraft equipped with TCAS II must consider this provision when planning for the proposed DRVSM implementation date of December 2004.

Eligibility of turbo-propeller Aircraft Operated Under Part 91 and Equipped with a single RVSM Compliant Altimeter. In the proposed amendment, the FAA proposes operational and airworthiness criteria for turbo-propeller aircraft operated under part 91 to conduct RVSM operations when equipped with a single RVSM compliant altimeter. The FAA believes that aircraft can be used in RVSM operations conducted under part 91 in US operations for the following reasons:

Frequency of Single Altimeter Operations. General aviation (part 91) operations account for approximately ten percent of the total flights in the U.S. between FL 290–410. Of these flights, only a small percentage of flights operating above FL 290 would be conducted by turbo-propeller aircraft equipped with a single RVSM compliant altimeter.

NAS Communications/Navigation/Surveillance (CNS) capabilities. Direct pilot-controller communications, a robust navigation aid structure, and ATC radar surveillance are available in US domestic airspace. ATC will have the CNS tools to aid a pilot experiencing a failure or malfunction of the primary altimeter in exiting RVSM airspace, to apply the appropriate separation to the aircraft, and to aid the pilot in diverting to an alternate airport, if necessary.

Continued Airworthiness. Aircraft approved for RVSM operations must be maintained under the Continued airworthiness requirements of appendix G, section 3 (Operator Authorization).

Altitude-keeping Performance Monitoring. Part 91 aircraft have participated in the altitude-keeping performance monitoring program established for RVSM implementation in oceanic operations and have demonstrated satisfactory RVSM performance. Aircraft equipped with a single RVSM compliant altimeter will participate in the monitoring program for domestic RVSM.

Loss of function and integrity. The single RVSM compliant altimeter/second or stand by altimeter installation detailed in the proposed Appendix G amendment would meet airworthiness requirements for availability and integrity of the RVSM altitude function.

Air Traffic Control Factors Related to RVSM Operations

RVSM implementation will require that certain air traffic policies and procedures be implemented to address issues related to the introduction of a reduced vertical separation standard. Policies and procedures will be established for the following:

- As discussed previously, unapproved aircraft will be allowed to climb or descend through RVSM airspace to operate above or below it, traffic permitting.
- Limited accommodation will be made for unapproved aircraft conducting air ambulance flights under a ''Lifeguard'' call sign.
- In areas when and where mountain wave is active, ATC will establish policies for the use of appropriate separation.

Wake turbulence events experienced in the past five years of RVSM operations have shown wake turbulence at RVSM FL's to be generally moderate or less than moderate. FL changes or aircraft lateral path offsets have been shown to mitigate the effect of wake turbulence.

Proposed Amendment to Part 91, Appendix G, Section 5 (Deviation Authority Approval). First, the FAA would only grant authority to deviate from the requirements of part 91 § 91.706 or the proposed § 91.180 in limited circumstances. The FAA may choose not to grant a deviation if the operator has elected not to equip its aircraft for RVSM operations because the presence of an unapproved aircraft could affect traffic flow and increase controller workload. Second, the FAA proposes to require the operator to submit an appropriate request in a time and manner acceptable to the Administrator, as published in the Aeronautical Information Manual and appropriate FAA orders. Section 5 currently calls for the operator to submit a request at least 48 hours in advance. However, several years of RVSM experience has shown that air traffic has been able, in certain circumstances, to accommodate the operation of unapproved aircraft with less lead-time. The proposed wording would allow the FAA to prescribe more appropriate policy when warranted by operational circumstances.

Proposed Amendment to VFR and IFR Cruising Altitudes At and Above FL 290. The FAA proposes to revise part 91, § 91.159 (VFR cruising altitude or flight level) and § 91.179 (IFR cruising altitude or flight level). The proposed revision to § 91.159 would eliminate reference to VFR FL's above FL 180. Airspace above FL 180 is established as Positive Control Airspace where aircraft must maintain the altitude or flight level assigned by ATC.

The proposed revision to § 91.179 would revise the altitudes or FL's that are considered to be appropriate for IFR flight in uncontrolled airspace above FL 290 in airspace where RVSM is implemented. In accordance with RVSM policy, this revision would provide FL's that are separated by 1,000 feet vertically based on the direction of flight.

Factors Related to Safety Analysis and Monitoring of Altitude-keeping Performance in the Pre-and Post Implementation Phases

Necessity for Monitoring Programs. DRVSM implementation would require RVSM standards to be applied to the thousands of aircraft and operators that operate above FL 290 in domestic airspace. In order to assess the uniform effectiveness of aircraft and operator actions and identify adverse trends that may arise, the FAA would establish a DRVSM monitoring program similar to those established for oceanic RVSM implementation.

Monitoring Experience. The altitude-keeping performance of RVSM approved aircraft has generally been significantly better than the minimum required by RVSM standards, however, in the past five years of RVSM operations, a few individual airframes and aircraft groups have demonstrated altitude-keeping that has not met RVSM standards. A major purpose of monitoring is to identify performance that does not meet RVSM standards and, when necessary, to ensure that operators and/or manufacturers take appropriate corrective actions.

Justification for Sampling Process and Monitoring After Approval Granted. Altitude-keeping performance monitoring began in 1996. Since that time, the FAA and other authorities responsible for monitoring have obtained approximately 120,000 measurements for appropriately 6,000 individual airframes and 80 individual

aircraft types. To date only seven airframes have been observed exhibiting performance that exceeded RVSM standards. In addition, altimetry system error for the aircraft population as a whole has been demonstrated to be significantly better than the minimum standards. These results have given the FAA and other authorities confidence in RVSM aircraft engineering processes. Based on the monitoring results, authorities have adopted the position that monitoring may take the form of a sampling of newly approved airframes and, for most aircraft, it was not necessary for operators to complete monitoring prior to RVSM operating authority being granted.

Systems Developed to Monitor Aircraft Performance. Two systems have been deployed to perform monitoring for RVSM purposes. One is the ground-based Height Monitoring Unit (HMU). The other is the GPS-based Monitoring Unit (GMU). HMU's are now placed in strategic locations in Canada, the UK and Europe so that a large percentage of flights will be observed. At least three FAA HMU's will be deployed by the FAA in the U.S. for the same purpose. Only aircraft that fly in close proximity to the HMU location can be observed.

To obtain performance measurements with the GMU system, a GMU unit is temporarily installed, in accordance with appropriate certification documents, on an aircraft for a flight. The unit contain a GPS to obtain the geometric height of the aircraft in flight. This data is processed after the flight by the FAA Technical Center to obtain measurement of ASE, Total Vertical Error (TVE) and Assigned Altitude Deviation (AAD).

Operators have had and will have for DRVSM, the options of overflying an HMU at no cost or contracting for service to have the GMU installed on the aircraft and data processed.

Operators have been notified of monitoring program processes and procedures in the following formats: letters to State authorities issued by ICAO Regional Offices, NOTAMS, FAA and JAA guidance and the FAA RVSM website.

Pre-Implementation Programs

In the 2–3 year period leading to RVSM implementation, operators will begin to obtain RVSM airworthiness approval for aircraft that have not already been approved for RVSM. During this period, the FAA will review aircraft operations with the overall objections of:

1. Confirming that operators are conducting RVSM operations safely.

2. Confirming through observation (monitoring) that aircraft approved for RVSM operation demonstrate altitude-keeping performance that meets RVSM standards. This will be achieved by:

- Identifying and eliminating any causes of out-of-tolerance altitude-keeping performance, in general or for specific aircraft groups; and
- Monitoring a sample of RVSM-approved aircraft and operators that is representative of the total population.

3. Verifying that operational procedures adopted for RVSM are effective and appropriate.

4. Confirming that the altitude-monitoring program is effective.

Post Implementation Programs

After DRVSM is implemented, the FAA will continue to:

1. Collect altitude-keeping performance data relying primarily on the ground-based HMU.

2. Monitor to confirm that safety goals are being met.

3. Monitor to establish that there are no unresolved adverse trends in DRVSM operations.

Conclusion

The FAA has examined the success of existing RVSM programs, the costs and benefits for DRVSM implementation, the measures to be taken to protect operational safety, the factors bearing on the implementation schedule and implementation scenario and the factors related to aircraft and operator approval and air traffic programs. The FAA proposes that RVSM should be implemented between FL 290–410 (inclusive) in December 2004.

Regulatory Impact Analysis Summary

Executive Order 12866 directs federal agencies to promulgate new regulations or modify existing regulations after consideration of the expected benefits to society and the expected costs. Each federal agency shall assess both the costs and the benefits of proposed regulations while recognizing that some costs and benefits are difficult to quantify. A proposed rule is promulgated only upon a reasoned determination that the benefits of the proposed rule justify its costs.

The order also requires federal agencies to assess whether a proposed rule is considered a ''significant regulatory action''. The Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. The Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Finally, Public Law 104–4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal governments, and the private sector.

In conducting these analyses, the FAA has determined that this rule: (1) Generates benefits that justify its costs for the significant majority of U.S. operators and is ''a significant regulatory action'' as defined in the Executive Order; (2) is significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) does not have a significant impact on a substantial number of small entities; and (4) does not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

This proposal expands Reduced Vertical Separation Minimum (RVSM) operations to aircraft operating between FL 290–410 (inclusive) in the airspace of the 48 contiguous States of the U.S., Alaska and the FIR's in the Gulf of Mexico where the FAA provides air traffic services. The benefits of this proposed rulemaking are: (1) An increase in the number of available flight levels; (2) enhanced airspace capacity; (3) permits operators to operate more fuel/time efficient routes and altitudes; and (4) enhanced air traffic controller flexibility by increasing the number of available flight levels, while maintaining an equivalent level of safety.

The FAA estimates that this proposed rule would cost U.S. operators $634.0 million for the fifteen-year period 2002–2016 or $539.9 million, discounted. For the purposes of this cost analysis, the FAA assumed that operators would choose to upgrade all of their aircraft to meet RVSM standards. Operators of non-RVSM approved aircraft would, however, retain the option of flying above or below RVSM airspace. Benefits would begin accruing in December 2004. Estimated benefits, based on fuel savings for the commercial aircraft fleet over the years 2004 to 2018, would be $5.8 billion or discounted at $2.9 billion.

In addition to fuel savings, many non-quantifiable or value-added benefits would result from the implementation of RVSM in domestic U.S. airspace. Input from air traffic managers, controllers, and operators has identified numerous additional benefits.

Through implementation of RVSM in the NAT and PAC regions, operators and controllers have realized some additional benefits. The major additional benefits as identified by air traffic managers and controllers are:

- Enhanced capacity

• Decreased operational errors in these regions
• Reduction of user-requested off course climbs for altitude changes
• Improved flexibility for peak traffic demands
• More options in deviating aircraft during period of adverse weather.

The benefits outlined above for RVSM in the NAT and PAC regions ae anticipated in domestic U. S. airspace. There should be expected efficiencies through reduced airspace complexity, increased flight levels, and fewer altitude changes with crossing traffic.

Operators can also expect enhanced operating efficiency and the potential for decreased departure delays due to improved airspace efficiency. Specific benefits cited by aircraft operators are:
• Decreased flight delays
• Improved access to desired flight levels
• Reduced average flight times
• Increased likelihood of receiving a clearance for weather deviations
• Seamless, transparent, and harmonious operations between the NAT and WATRS regions
• Consistent procedural environment throughout the entire flight
• Reduced impact of adverse weather by permitting aircraft deviations to other airways without any efficiency loss.

Implementation of RVSM in U.S. domestic airspace should increase user satisfaction. The benefits described in this section are compelling in number and operational impact. These benefits are also important in that they are enjoyed both by air traffic and aircraft operators.

Analysis of Alternatives

This NPRM is a ''significant regulatory action'' as defined by Executive Order (E.O.) 12866 (Regulatory Planning and Review) because this NPRM would impose costs exceeding $100 million annually. The E.O. requires that agencies promulgating economically significant rules provide an assessment of feasible alternatives to their respective rulemaking actions. In addition, the E.O. requires that an explanation of why the final rule, which is significant, is preferable to the identified potential alternatives. The FAA identified and considered three alternatives to the proposed rule.

Alternative One—The Status Quo

The alternative would maintain the 2,000-foot separation above FL 290 and would avoid the equipment and testing requirements of this NPRM, which impose a cost of $634.0 million ($539.9 million, discounted) from 2002 to 2004 on the aviation industry and the FAA. But maintaining the status quo also means that aviation industry would not receive any of the cost-savings afforded by Domestic RVSM.

As mentioned earlier, the cost-savings afforded by this NPRM are estimated to be $5.8 billion ($2.9 billion, discounted) in fuel savings over the same period. Since the foregone cost-savings of the alternative greatly exceed the avoided NPRM costs, the FAA rejects this alternative in favor of the proposed rule.

Alternative Two—Implement Domestic RVSM Without the Equipment and Testing Requirements

This alternative would allow RVSM between FL 290 and FL 410 without requiring aircraft system engineering to 14 CFR part 91, appendix G. This alternative would allow the aviation industry to receive the estimated $5.8 billion ($2.9 billion, discounted) in fuel savings while the aviation industry and the FAA avoids the NPRM costs of $634.0 million ($539.9 million, discounted). Unfortunately, this is not a viable alternative due to safety considerations.

Studies by the FAA and European civil aviation authorities have shown that many aircraft that have not been calibrated to the proposed RVSM standards exhibit altitude-keeping errors that exceed the Standards established for RVSM safety. In these studies, non-RVSM calibrated aircraft were observed with errors of up to 700 feet. Under RVSM aircraft are allowed to operate with only 1,000 feet vertical separation. If non-RVSM calibrated aircraft were allowed to operate with only 1,000 feet vertical separation, there could be a 400 foot altitude overlap in altitude-keeping errors for two non-RVSM calibrated aircraft operating in close proximity to each other. Thus, there is an increase risk of midair collisions if non-RVSM calibrated aircraft are allowed to operate under RVSM. Sine there are some aviation safety concerns with this alternative, this alternative is also rejected in favor of the proposed rule.

Alternative Three—Delay Implementation of the RVSM by Seven or Eight Years

This alternative would delay implementation of the proposed rule by seven or eight years. This would allow the costs to be spread over a longer period of time so that costs in any one-year would be below $100 million. This would make the proposed rule no longer economically significant under E.O. 12866. The cost of this alternative would still be the same as the cost of the proposed rule, although the discounted costs would be lower than the discounted costs of the proposed rule. However, if implementation of the rule is delayed by seven or eight years, the estimated cost-savings would be reduced by $2.0 billion or $2.4 billion, respectively ($1.5 billion, discounted or $1.8 billion, discounted, respectively). This is a considerable amount of cost-savings to forego in order for the FAA to avoid issuing an economically significant rule. For this reason, this alternative is rejected in favor of the proposed rule.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable status, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Only two small operators were found to have significant costs of compliance. This is not a substantial number of small entities that would be significantly affected by this proposed rulemaking. Therefore, the FAA certifies that this proposed rulemaking does not have a significant impact on a substantial number of small entities. The FAA requests comments from small operators affected by this rulemaking concerning the findings of this regulatory flexibility determination.

International Trade Impact Statement

The FAA has assessed the potential effect of this rulemaking and has determined that it would impose the

same costs on domestic and international entities and thus has a neutral trade impact.

Federalism Implications

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act of 1995

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Reduced Vertical Separation Minimum.

Summary: This proposal requires aircraft operators seeking operational approval to conduct RVSM operations within the 48 contiguous States of the United States (U.S.), Alaska and that portion of the Gulf of Mexico where the FAA provides air traffic services to submit application to their Certificate-Holding District Office (CHDO).

Use of: This proposal would support the information needs of the operator's CHDO as they register RVSM approved airframes in the FAA RVSM Approvals Database. When operators complete airworthiness, continued airworthiness and operations program requirements, the CHDO grants operational approval.

Respondents: The 2,275 likely respondents to this proposed information requirement are scheduled and non-scheduled commercial air carriers, and corporations or individuals operating RVSM-capable aircraft.

Frequency: The FAA estimates that this proposed information requirement would be a one-time submission of application for operational approval. Thus, the frequency of an annual requirement is zero.

Annual Burden Estimate: This proposal would result in a one-time recordkeeping and reporting burden. The proposed rule, while imposing additional reporting and recordkeeping requirements on those operators, would have the following impacts:

- The estimated preparation time for an operator to complete and submit an application for operational approval to their CHDO would be 16 hours.
- All pilots would need to be trained to ensure familiarity with RVSM operations. Each organization would have a navigation specialist prepare a document. The FAA anticipates that it would take this specialist approximately 14 hours to prepare the document; and
- Each pilot would have to receive a copy of the 4-page training document. To be conservative, the FAA is assuming that each pilot's document has been photostated. Each organization would need to spend 30 hours on paperwork at a cost of approximately $950 each. The total hours and costs sum to 68,250 hours and $2,147,052.40.

The FAA estimates that aircraft upgrade costs for this proposed rule would cost U.S. operators $578.3 million. While it is impossible to accurately isolate the equipment costs associated with these upgrade costs, the FAA estimates that approximately 50% or $289.2 million of the upgrade costs will be due to equipment costs. In addition, all aircraft equipped with TCAS version 6.04 would be required to upgrade to TCAS II Version 7.0 at a cost of $45.6 million. The total equipment costs for this proposed rule are estimated at $334.8 million.

The regulation will increase paperwork for the Federal government:

The FAA assumes that it would take either an avionics inspector or an operations inspector 8 hours to process each applicant submission. The time and cost to the Federal government for processing 2,275 application packages is 18,200 and $981,162.00.

The FAA is soliciting comments to—(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by July 9, 2002, and should direct them to the address listed in the **ADDRESSES** section of this document.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

Unfunded Mandates Reform Act of 1995 Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector; such as a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

International Civil Aviation Organization and Joint Aviation Requirements

In keeping with U.S. obligations under the Convention on ICAO, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to maximum extent practicable. The operator and aircraft approval process was developed jointly by the FAA and the JAA under the auspices of NATSPG. The FAA has determined that this amendment does not present any difference.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that this proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Air-traffic control, Aircraft, Airmen, Airports, Aviation safety. Reporting and record-keeping requirements.

The Proposed Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration proposes to amend part 91 of Title 14 of the Code of Federal Regulations (14 CFR Part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528,–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

* * * * *

Subpart B—Flight Rules

1. Amend § 91.159 by revising paragraph (b) to read as follows and by removing paragraph (c):

* * * * *

§ 91.159 VFR cruising altitude or flight level.

* * * * *

(b) When operating above 18,000 feet MSL, maintain the altitude or flight level assigned by ATC.

* * * * *

2. Amend § 91.179 by revising paragraph (b)(3), introductory text, and adding a new paragraph (b)(4) to read as follows:

§ 91.179 IFR cruising altitude or flight level.

* * * * *

(b) *In uncontrolled airspace.* * * *

(3) When operating at flight level 290 and above in non-RVSM airspace, and—

* * * * *

(4) When operating at flight level 290 and above in airspace designated as Reduced Vertical Separate Minimum (RVSM) airspace and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd flight level, at 2,000-foot intervals beginning at and including flight level 290 (such as flight level 290, 310, 330, 350, 370, 390, 410); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even flight level, at 2000-foot intervals beginning at and including flight level 300 (such as 300, 320, 340, 360, 380 or 400).

3. Add section 91.180 to subpart B to read as follows:

* * * * *

§ 91.180 Operations within airspace designated as Reduced Vertical Separation Minimum airspace.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace unless:

(1) The operator and the operator's aircraft comply with the minimum standards of appendix G of this part; and

(2) The operator is authorized by the Administrator of the country of registry to conduct such operations.

(b) The Administrator may authorize a deveration from the requirements of this section.

4. Amend Appendix G as follows:

a. Amend Section 2 by revising paragraph (c)(1) and paragraph (h) and adding a new paragraph (i).

b. Amend Section 5 by revising the introductory text; redesignating paragraph (2) as paragraph (a) and by revising newly redesignated (a);

c. Amend Section 8 by adding new paragraphs (d) and (e).

The revisions and additions read as follows:

Appendix G To Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

Section 2. Aircraft Approval

* * * * *

(c) Altitude-keeping equipment: All aircraft. * * *

(1) The aircraft must be equipped with two operational independent altitude measurement systems that meet the requirements of paragraphs (d), (e) or (f), as appropriate, unless the aircraft is approved and operated in accordance with the provisions of paragraph (h) of this section.

* * * * *

(h) Turbo-propeller Aircraft Operated Under Part 91 Equipped With a Single RVSM Compliant Altitude Measurement System. Such aircraft will be considered eligible for RVSM operations conducted under part 91 within the airspace of the U.S. and within the airspace of foreign countries that authorize such a provision, provided that:

(1) Altimeters are installed in the aircraft in accordance with the provisions of part 23 or part 25, as appropriate; and

(2) The Administrator finds that at least one of the installed altitude measurement systems meets the standards for altimetry system error containment detailed in paragraphs (d), (e), or (f), as appropriate, of this section; and

(3) A second altitude measurement system is installed and the pilot provided with a means (such as correction cards) to correct for the inaccuracy in that altimeter when operating in RVSM airspace; and

(4) Procedures are established for pilots to:

(1) Use the appropriate means (e.g., correction cards), after initial level off, to compare the accuracy of the RVSM compliant altitude measurement system to the second system; and

(ii) Report as soon as practical to ATC any malfunction of the installed RVSM compliant altimeter occurring in flight that would prevent the aircraft from maintaining altitude to the degree of accuracy required for RVSM operations.

(i) If the Administrator finds that the applicant's aircraft complies with this section, the Administrator will notify the applicant in writing.

* * * * *

Section 5. Deviation Authority Approval

The Administrator may authorize an aircraft operator to deviate from the requirements of § 91.180 or 91.706 for a specific flight in RVSM airspace if that operator has not been approved in accordance with Section 3 of this appendix if:

(a) The operator submits a request in a time and manner acceptable to the Administrator; and

* * * * *

Section 8. Airspace Designation

* * * * *

(d) *RVSM in the United States.* (1) RVSM may be applied in the airspace of the 48 contiguous states and Alaska, including that airspace overlying the waters within 12 nautical miles of the coast.

(e) *RVSM in the Gulf of Mexico.* (1) RVSM may be applied in the Gulf of Mexico in the following areas: Houston Oceanic ICAO FIR, Miami Oceanic ICAO FIR, and the Jacksonville Offshore Airspace.

Issued in Washington, DC, on May 6, 2002.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 02–11704 Filed 5–7–02; 12:00 pm]

BILLING CODE 4910–13–M

Federal Register

Friday,
May 10, 2002

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 121, and 139
Civil Aviation Security Rules; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, and 139

[Docket No. TSA–2002–11602; Amendment Nos. 91–274; 121–275; 139–25]

RIN 2110–AA03

Civil Aviation Security Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making minor technical changes to a final rule published in the **Federal Register** on February 22, 2002, effective February 17, 2002. That final rule transferred certain FAA regulations to the Transportation Security Administration (TSA) and removed parts 107, 108, 109, 191, and Special Federal Aviation Regulation (SFAR) No. 91 from title 14 of the Code of Federal Regulations. The final rule, however, did not make conforming amendments to several cross-references to parts 107 and 108 appearing elsewhere in the FAA's regulations. This technical amendment conforms the cross-references to parts 107 and 108. These changes are not substantive in nature and will not impose any additional burden or restriction on persons or organizations affected by these regulations.

EFFECTIVE DATE: May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Mardi Thompson, Transportation Security Administration, 400 Seventh Street SW., Washington, DC 20590; telephone 202–493–1227.

SUPPLEMENTARY INFORMATION:

Background

The September 11, 2001, terrorist attacks and the potential for future attacks led Congress to enact the Aviation and Transportation Security Act, Public Law 107–71, November 19, 2001, which established the TSA as an administration within the Department of Transportation. On February 22, 2002, the FAA published in the **Federal Register** (67 FR 8340) a document that transferred the regulations on civil aviation security from the FAA to the newly created TSA, and removed parts 107, 108, 109, 191, and SFAR No. 91. However, we did not include conforming amendments to certain cross-references to parts 107 and 108, which are now obsolete. This technical amendment makes the appropriate technical changes to conform obsolete references to parts 107 and 108.

Removal of SFAR No. 95

Two references to part 108 were found in SFAR No. 95 in part 91 of title 14. SFAR No. 95 is a temporary regulation related to a specific event. SFAR No. 95 concerns Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games, Salt Lake City, Utah, and expired on February 25, 2002. When an SFAR expires, the Office of the Federal Register does not automatically remove it from the regulations. The agency is required to publish an amendment to accomplish the removal of an expired SFAR from the Code of Federal Regulations. Since SFAR No. 95 expired on February 25, 2002, and is no longer in effect, we are removing SFAR No. 95 from the regulations rather than correcting the references.

Immediately Adopted Final Rule

Under the Administrative Procedure Act, an agency does not have to issue a notice of proposed rulemaking when the agency for good cause finds that notice and public procedure are ''impracticable, unnecessary, or contrary to the public interest.'' See 5 U.S.C. 553(b). Because this technical amendment simply corrects inaccurate references, we find that publishing the change for public notice and comment is unnecessary.

The Administrative Procedure Act also states that an agency must publish a substantive rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause. See 5 U.S.C. 553(d). We find that this technical amendment imposes no additional burden or requirement on the regulated industry, and is not substantive in nature. Moreover, we find that there is good cause to make the change effective immediately upon publication in the **Federal Register**. It is in the public interest to remove these inaccurate references from our regulations without further delay.

Regulatory Analyses

This regulation is editorial in nature and imposes no additional burden on any person or organization. Accordingly, we have determined that the action is not a significant rule under Executive Order 12866 or under Department of Transportation Regulatory Policy and Procedures. No impact is expected to result, and a full regulatory evaluation is not required. In addition, the FAA certifies that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Federal Aviation Administration amends parts 91, 121, and 139 of title 14 of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

SFAR No. 95 [Removed]

2. Remove SFAR No. 95 from part 91.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C.106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

§ 121.575 Alcoholic beverages.

4. Amend § 121.575(b)(2) by removing ''§ 108.21'' and adding in its place ''49 CFR 1544.221''.

5. Amend § 121.575(b)(3) by removing ''§ 108.11'' and adding in its place §49 CFR 1544.219, 1544.221, or 1544.223''.

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

6. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44706, 44709, 44719.

§ 139.335 Public protection.

7. Amend § 139.335(b) by removing ''part 107 of this chapter'' and adding in its place ''49 CFR part 1542''.

Issued in Washington, DC, on May 3, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 02–11658 Filed 5–9–02; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 10, 2001

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

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Air pollution control:
- Acid rain program—
  - Permits rule revision; industrial utility-units exemption removed; published 3-1-01

FEDERAL COMMUNICATIONS COMMISSION

Radio and television broadcasting:
- Experimental broadcast stations; multiple ownership rule eliminated; published 4-10-01

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Children and Families Administration

Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation:
- Temporary Assistance for Needy Families Program—
  - High performance bonus awards to States; published 5-10-01

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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- Cardiovascular devices—
  - Reclassification of six preamendments Class III devices into Class II; published 4-10-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; published 4-25-01
- Gulfstream; published 4-25-01
- JanAero Devices; published 4-17-01

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- Rinderpest and foot-and-mouth disease; disease status change—
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  - Great Britain and Northern Ireland; correction; comments due by 5-14-01; published 4-6-01

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- Good faith reliance and excessive rainfall; comments due by 5-14-01; published 3-15-01

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National Oceanic and Atmospheric Administration

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  - Atlantic bluefin tuna; comments due by 5-14-01; published 4-2-01
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  - Domestic fisheries; exempted fishing permits; comments due by 5-15-01; published 4-30-01
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- BMW Rolls-Royce GmbH; comments due by 5-14-01; published 3-14-01
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 861/P.L. 107–169

To make technical amendments to section 10 of title 9, United States Code. (May 7, 2002; 116 Stat. 132)

H.R. 4167/P.L. 107–170

To extend for 8 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted. (May 7, 2002; 116 Stat. 133)

Last List May 2, 2002

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